

ENVIRONMENTAL QUALITY COUNCIL

Friday, December 6, 1996
Montana State Capitol, Room 104

Original Minutes with Attachments

COUNCIL MEMBERS PRESENT

Mr. Jerry Noble, Chair
Rep. Vicki Cocchiarella, Vice-chair
Sen. Steve Doherty
Sen. Lorents Grosfield
Rep. Dick Knox
Mr. Glenn Marx

Sen. Ken Mesaros
Rep. Scott Orr
Rep. Bill Ryan
Ms. Jeanne-Marie Souvigney
Rep. Bill Tash
Mr. Greg Tollefson

COUNCIL MEMBERS EXCUSED

Sen. Vivian Brooke
Sen. William Crismore
Rep. Debbie Shea
Mr. Jerry Sorensen
Sen. Jeff Weldon

STAFF MEMBERS PRESENT

Ms. Martha Colhoun
Mr. Todd Everts
Mr. Larry Mitchell
Ms. Kathleen Williams

VISITORS' LIST

ATTACHMENT 1

COUNCIL ACTION

Voted to accept the compliance and enforcement bill with discussed changes and approve its presentation to the legislature.

Voted to make a recommendation that next interim's EQC assist with promoting and disseminating information on voluntary grazing BMPs and the work of the Grazing Practices Working Group.

Voted unanimously to adopt the EQC's water policy report.

Voted unanimously to refer a study of the Ground Water Assessment Act administrative and funding structures to the next EQC.

Voted unanimously to award the 1996 George Darrow MEPA Award to Bob Thompson.

Voted unanimously to have the staff monitor the Mr. Paul water situation in Bozeman.

CALL TO ORDER AND ROLL CALL

On December 6, the chair called the meeting to order at 8:30 a.m. at the State Capitol. He asked the secretary to take note of members in attendance.

APPROVAL OF MINUTES

The minutes from the last meeting were not yet available for the Council to review and approve.

ADMINISTRATIVE MATTERS

Indicators Project

MR. EVERTS reminded the Council that the staff had promised to send EQC members copies of the indicators report prior to this meeting. That promise was made before he had gotten the news that it may take a budget amendment on the part of Budget Office to give the EQC the authority to expend the \$9,444 Florida grant. He said he just received news that the Budget Office had approved that budget amendment, without the legislature's approval. Now that the EQC has the money, and it can be spent, the reports will be sent out.

EQC Budget

MR. EVERTS said the EQC budget was submitted to the Legislative Council and that due to some efficiencies created by consolidation and reorganization, the 1998/1999 budget submitted was \$5,000 less than the previous budget. This is the first time the EQC has submitted a budget with a reduction.

MR. EVERTS warned Council members that although the EQC has a \$28,000 appropriation from the RIT fund for water policy expenses, the \$28,000 appropriation may be lost, or at least threatened during the upcoming session. If that happens, some of the EQC members may have to decide how the EQC is going to deal with that possibility.

Legislation

Mr. EVERTS reported that 93 pieces of legislation had been received by the EQC staff, almost half of which came in on the December 5th deadline. He said the bill draft requests include the “Hanna bill” legislation dealing with SO₂ standards in the Billings area; five pieces of legislation on electrical industry restructuring which will be discussed later in the meeting; and bills concerning underground tanks, subdivisions, conservation easements, the Major Facility Siting Act, and a number of water bills. More bills are expected prior to the legislative session.

MR. NOBLE asked MR. EVERTS to tell the Council the committees that LEPO would be staffing.

MR. EVERTS explained that the staffing responsibility under the reorganization has expanded. In addition to the usual committee assignments--House Natural Resources Committee, which MS. WILLIAMS will be staffing along with the help of MS. COLHOUN, and the Senate Natural Resources Committee, which MR. MITCHELL will be staffing--LEPO will be staffing the Senate Local Government Committee, and possibly the Senate Agriculture Committee. There may be some extra activities associated with the electrical industry restructuring that will be managed by MR. EVERTS.

ELECTRICAL INDUSTRY RESTRUCTURING

MR. NOBLE felt it was appropriate at this time for REP. ORR or REP. RYAN to discuss electric industry restructuring.

REP. RYAN stated that there are several bills pending. He said he attended a meeting on December 5th with the Public Service Commission and all Montana utilities. There were points of consensus on needed legislative action and there were other places where opinions differed. He said the differences will need to be resolved. He said he would personally like to see a select committee put together because the issue is monumental, and the industry is so important to the state.

REP. ORR added to REP. RYAN'S comments. He said that electric industry restructuring is an incredibly complex issue. Nationally, trucking, cable, and the airline industries have already gone through deregulation. This is the last major industry to be deregulated. REP. ORR stated he has worked for the last year with the American Legislator Exchange Council. They held several meetings around the United States trying to draft a model bill, which they completed and the board approved December 4. That is the bill REP. ORR introduced. He stated he agrees with REP. RYAN that there is a need for this issue to be addressed in a select committee, though it may be late for that. He said electric industry restructuring is being driven by national legislation passed in Congress in 1992, thus several other states, including Oregon and Washington, have introduced legislation, and Idaho has made efforts as well. He said Montana needs to respond to the national directive and still ensure that the state maintains its low rates. REP. RYAN said that parts of this issue are very controversial and will need to be looked at closely. He reminded the Council that the territorial integrity issue was discussed in the 1971 Session. According to people who were here at that time, much of the session was spent on that one issue. And that is just one portion of the electrical industry restructuring issue that has to be addressed. Industry that is regulated and industry that is not regulated are providing the same service. Part of this issue is how to bring these two industries to work "under the same umbrella."

MR. NOBLE reaffirmed that REP. ORR and REP. RYAN would like to see a joint select committee put together during this legislative session to deal with energy deregulation. He said that it seems odd, with this complex an issue, that a committee had not already been appointed. REP. RYAN clarified that a lot of work had been done on the issue, but that now it was coming before the legislature, and to bring everyone up to speed would be an almost impossible task without assigning a small group of people who could devote a lot of time to the discussion. He stated that this issue is too important to let it go the wrong direction.

REP. TASH asked if this involved the communication with utilities as well.

REP. RYAN said that they were involved, but their issues were not as complex.

COMPLIANCE AND ENFORCEMENT STUDY

Agency Responses to the Study Recommendations

MR. NOBLE asked MS. WILLIAMS to introduce the "agency response" panel. MS.

WILLIAMS said that at the last EQC meeting, MR. MARX offered to coordinate with the

Executive Branch and asked the directors to provide a representative to this meeting to respond to the recommendations from the compliance and enforcement study report. GARY GINGERY, representing the Department of Agriculture, JOHN ARRIGO from the Department of Environmental Quality, and RANDY MOSLEY from the Department of Natural Resources and Conservation, attended to give a general overview of their agencies' responses.

MR. ARRIGO spoke for the DEQ. He stated the DEQ generally agrees with the study findings and recommendations. The EQC report, combined with the recent legislative audits of several of the DEQ programs, has provided the department with guidance on how to operate its reorganized environmental programs. He said he agreed that all agencies should have written enforcement policies and procedures and be required to report regularly on these activities. To properly manage an agency, the director and division administrators need this information. He said that as the DEQ is organized, the staff fully expects to have tracking systems in place and to be able to produce meaningful reports with no significant expenditure of additional staff time. The recommendation that the agency promote education and technical assistance as a method to minimize enforcement has already been advanced by MARK SIMONICH, Director of the DEQ, as a means to help the regulated community maintain compliance. The findings and recommendations contained in the report are somewhat general in nature, however, and some do not apply to the DEQ.

[Note that the tape recorder didn't record about 10 minutes of the meeting.]

REP. KNOX agreed that the report conclusions covered a broad spectrum, but overall the Council did find that some of the agencies had difficulty compiling and presenting information on their compliance and enforcement activities. He said that perhaps the language is a little more direct than it needs to be, but nevertheless, it accurately reflects some of the problems that the EQC witnessed.

MR. EVERTS said a discussion of the bill was included in the next agenda item, but at this point, he wanted to mention that in his drafting of this bill, it was not his intent to offend anyone. The language was taken directly from the report in which the Council documented their findings. Whether the "Whereas's" are included in this piece of the legislation is completely up to the Council. He stated it was his intent to provide a reason why this reporting requirement was being requested of the legislature.

MR. ARRIGO agreed that there were and are problems in tracking enforcement data. But, he said, what is not stated is that the majority of the regulated community is in compliance, and there are positive findings in the study that could be mentioned to balance the problems noted. SEN. DOHERTY said he could appreciate MR. ARRIGO'S comments, but the reason there is legislation to fix something is because it's not working. The Council made only a cursory review of those departments that were working--some programs had the information and were able to provide the information. It was his observation that other programs "didn't have a clue." SEN. DOHERTY stated that the DEQ is improving in its enforcement efforts, and MR. ARRIGO'S specific agencies were probably not the ones that the Council is most concerned with. But, the EQC has an oversight role, so it is legitimate to explain to the legislature why the Council is actually going to require someone to submit information. REP. KNOX followed up on that point. He said he was frankly surprised at the difficulty some of the agencies had at the beginning of the study. By the conclusion of the study, it was very obvious that measures were being taken to correct problems that had been identified. He stated that will show in subsequent reports.

REP. COCCHIARELLA wanted more information from MR. ARRIGO concerning his reference to "unfunded mandate."

MR. ARRIGO said that the DEQ is putting together tracking systems to monitor their enforcement activities--for example, the number of complaints, the number of field investigations, the number of penalties. He believes the DEQ needs to have that information to monitor the performance of the agency. The proposed legislation talks about requiring reporting on educational activities that are tied to enforcement prevention and that is a little more nebulous. The department must reflect on what educational/technical assistance activities it conducts. For example, the department has very specific educational and training programs to certify public water supply operators, so this aspect is easy to measure. But there are a lot of broad, general education activities that will be difficult to quantify as they relate to enforcement. Using education as a tool in compliance and enforcement programs is a new measure. Measuring education assistance and reporting on it is going to be very general and take some time.

MR. TOLLEFSON spoke to clarify the committee's intention. He stated that they are not asking for numbers of brochures handed out, numbers of seminars held, etc., but, in a more general way,

what the department is doing in terms of education and outreach and why they are doing it. He said he certainly didn't envision that taking a tremendous amount of work.

MR. ARRIGO stated that, for example, the department has an ombudsman program to help small businesses comply with air quality regulations. That can be described in a paragraph, but it is not clear that that is what the Council wants--very general reports on the general education activities of the department.

MR. TOLLEFSON said that would be a start, and, yes, that is what the Council wants to know.

MS. SOUVIGNEY agreed with MR. TOLLEFSON. She stated that the EQC was not looking for detailed information, even though the findings say they want something quantitative. The committee agreed that it wants to promote compliance and not just resort to enforcement. It therefore needs some indication of what is working and what the department is able to do. MS. SOUVIGNEY stated that she didn't think it would require the amount of effort that would constitute an unfunded mandate.

REP. KNOX said that it's clearly not the intent of the committee to burden agencies with a huge amount of additional work. The Council understands that the department's platter is full.

However, the committee agreed unanimously that those departments with an educational component had been successful, and those efforts should be expanded. He stated that it was very clear that the committee, and the legislature as a whole, were going to want to have some idea of what's being done. The report should be "a best effort" on the part of the department. It can be fine-tuned as time goes on.

MR. GINGERY, representing the Montana Department of Agriculture (DOA), made his comments. He said though the department believes it has a comprehensive and balanced enforcement/compliance program, the study has assisted the DOA in internally reviewing programs and in defining additional needs and improvements. The DOA has a few recommendations concerning the proposed legislation. It endorses the DEQ's comment that recommends a biannual reporting system. He added that it is not clear when the reports should be completed or if the Council wants a comprehensive report or a very concise report. He stated that after listening to the conversations this morning, it sounds like the committee wants something very concise, and not an encyclopedia of activities. MR. GINGERY said that resource-wise, that would help the department. He pointed out that, if the Council chooses biannual reporting, the DOA can also at any time provide specific, quantitative information to the committee and the public when there are special needs or issues that need to be addressed.

But he wanted the EQC to realize that all the agencies are converting their computer data base systems from DBASE to ORACLE, and that currently the pesticide tracking and education systems are DBASE-oriented and the department is going to have to make that conversion. REP. KNOX asked MR. GINGERY to give him a time frame on the computer conversion. MR. GINGERY said that his agency's first priority would be converting the licensing and registration programs. He said it is important that the licensing programs are working for those who need the service, such as applicators and grain dealers. He said that will probably take up to a year, which means the other DBASE programs will follow after that. But he stated the department will try to maintain both systems through this process. He also said the EQC might want to consider the idea of minimum legislative oversight once a department or a program has demonstrated it has implemented and is managing a comprehensive enforcement and compliance program. MR. GINGERY stated that they have minimum oversight status with their EPA programs, and one of the advantages is that it reduced the enormous amount of paperwork. REP. KNOX asked if it was MR. GINGERY'S intent that the first report be produced this July 1st?

MR. GINGERY said that this was the first time he had heard the date July 1st. He said he believes this date is doable, but he would need to give it more consideration. In his agency's particular work, it is extremely busy from about May to mid-September, and he is concerned about taking his compliance people off of assessing and initiating individual cases.

REP. KNOX commented on the concept of minimum oversight. He said that if things go as the Council hopes, that will take care of itself over a period of time.

MR. MOSLEY, representing the Department of Natural Resources and Conservation, made his comments. He said he would like to mention three things. First, the DNRC generally supports the subcommittees recommendations in the study. Second, the department, as a natural resource management agency, is somewhat different in the types of compliance activities that it reports and studies than other agencies, such as the DEQ. Third, the DNRC would like to continue to work with the EQC in trying to ensure that the recommendations and legislation also fit DNRC's activities. MR. MOSLEY said that the DNRC, as a recently reorganized agency, found that the study provided a very beneficial opportunity for program management staff from previously separate departments to get together, work through the study conclusions, and see how other administrator's were conducting their compliance and enforcement activities. He said the new DNRC department administrators found, surprisingly, that they had a very similar philosophy.

The department's philosophy asserts that information, education, and assistance are the means by which most of the agency's resource protection will be obtained, and that aggressive enforcement actions are reserved for those cases when a natural resource has been threatened and information and education did not bring the desired result. As a natural resource management agency, the DNRC administers a wide variety of programs whose function is to provide administrative, technical, and financial assistance to other agencies and local governments and the affected publics. As a result of legislative reorganization, most of the DNRC's previous regulatory functions were transferred to the DEQ. Of the approximately 480 FTEs, probably less than 40% are involved in compliance and enforcement activities. In providing information to the EQC, the DNRC used as examples any program that provided either technical assistance or had some type of compliance or enforcement function. For example, the Fire and Aviation Management Program, by administering burning permits, enforcing restrictions and closures, or ensuring the use of spark arresters on vehicles in forested areas, provides more of an information and education function, rather than a true compliance and enforcement function. He said the department thus reported on a lot of activities that were tangentially related to compliance and enforcement. A problem arises in attempting to apply the recommendations of the Compliance and Enforcement Study to programs that do not strictly have compliance and enforcement functions. He said the department agrees with the recommendations and would like to continue to work with the committee to define what DNRC programs and activities the Council believes fall under the reporting requirements of the proposed legislation.

REP. KNOX stated that defining what information is needed is an ongoing process. He said that the recommendations should provide guidance. In addition, the EQC meets on a fairly regular basis and the staff is very conversant with the entire process and can assist the departments with their concerns.

REP. COCCHIARELLA raised a question. She said that as she listened to the departments, it concerns her that the Council will be given numbers that have no meaning, or numbers that could be used in a negative way. For example, does the trend of fewer enforcement actions mean the departments are not doing their job, or does it mean that they've done such a good job that enforcement actions are no longer needed? It seems to her that it will require a lot of explanation and is going to have to be bigger so that the numbers and trends have meaning.

MR. ARRIGO responded. He stated that it is true, a person can say a lot of different things with the same numbers, and some explanation will be necessary. He further stated that he thinks REP. KNOX was correct when he said this was evolving. MR. ARRIGO said that two to three years ago when the water quality enforcement audit was ongoing, it was shocking to see front-page lists of enforcement requests and what the department was and wasn't doing. Since then, the DEQ has been defining procedures and tracking things better. If the department can start out with a more simple report and see how that goes, maybe the reporting format itself can evolve over time.

MR. TOLLEFSON responded to MR. MOSLEY'S concerns. He said that for the DNRC's programs, the information that was presented during the course of the study is the same information, perhaps in less detail, that the Council is looking for in the annual reporting. Where it's not practical to generate figures related to some of those programs, instead describe the educational component.

MR. NOBLE asked for comments from MR. MARX.

MR. MARX thanked the three agency representatives. He said what he heard is that the agencies embrace the recommendations of the report, that they would like to work with the EQC on a bill, and that they are struggling along with the Council on exactly what the final report is going to look like. He said he didn't think they could decide that question right now. The bill is flexible and the report can evolve into what the Council and departments want it to be, a document which is accurate and meaningful and helpful. He would like the departments to present an objective and unbiased report and let others interpret the information.

SEN. GROSFIELD asked REP. KNOX if this was the only piece of legislation coming out of this study.

REP. KNOX replied that it was.

SEN. GROSFIELD said that MR. ARRIGO was concerned about the "Whereas" part of the bill and about budget issues with respect to education. He asked if MR. ARRIGO had any other concerns.

MR. ARRIGO said no.

SEN. GROSFIELD said he shared some of REP. COCCHIARELLA's concerns. He said the Council is asking the executive branch, with this piece of legislation, to report to a legislative committee without saying what the legislative committee is going to do with the information. What the Council intends to do with the information may require further thought. If the reports are supplied sometime in the first year, that would give the EQC some time to analyze and to respond to the reports, and perhaps develop a summary report that could be presented the following legislative session. Another benefit to this schedule is it would give the EQC the time and opportunity to see to it that the numbers are reported on objectively. SEN. GROSFIELD stated that the legislature's going to be interested in this information, and it should be required of the EQC to report to the legislature biannually. If annual reports are a difficulty for the departments, that is something the Council can talk about. He stated that his final point is that since this is the only bill coming out of the study, and a lot of people, both in and outside of the legislature, are not going to go through the reams and reams of material provided during the study, he shares MR. ARRIGO's concerns about the "Whereas's". People are going to look at those four "Whereas's" and believe that the study findings were all negative. He said that the Council should either get rid of them or add some of the positive findings to balance them. His preference is to add to them.

MR. NOBLE asked for other comments.

MR. ARRIGO asked whether the Council had the authority to ask the agencies to do this reporting, or if it had to go through the legislature?

REP. KNOX replied that the Council probably has the authority since the legislation is intended to formalize the process.

Primacy Round Table

MARK SIMONICH, Director of the Department of Environmental Quality, reported on the issue of state primacy of environmental programs. He said that originally, he and REP. KNOX had discussed hosting a round table discussion, but decided that first it would be beneficial to survey other states to find out if they ask the same kinds of questions or are confronted with the same kinds of problems. For example, if the state has primacy over a program, does the federal agency, generally the EPA, exert a great deal of influence or override state authority? DIR. SIMONICH said that, according to the survey conducted by the EQC staff, generally each one of

the states indicated that they encounter a variety of challenges with environmental programs in which they have primacy. But rather than approaching the problem with a group of other states in a round table discussion, they prefer to work singularly with the EPA rather than jeopardize their relationship through the appearance of a multi-state “bashing session”. DIR. SIMONICH stated that it may be more appropriate to host this discussion in a year because of this reluctance by other states to participate, because the DEQ is still unsettled, and because Montana is beginning to enter into performance partnership agreements and block grant programs, which changes their relationship with the EPA. DIR. SIMONICH also said that performance partnership agreements are a more flexible way of operating and managing programs in cooperation with the EPA. Colorado and Utah are the lead states in Region 8 in instituting these agreements. DIR. SIMONICH said that one of the problems Montana has had with the EPA relates to enforcement. The state has taken civil action against someone and the EPA has stepped in and overridden their decision. Four of the five states surveyed mentioned enforcement as one area where they have problems with the EPA. The state and the EPA are continuing to work on this issue.

REP. KNOX commented that it was interesting to him that the results of the study showed that there is some degree of apprehension in the various states regarding an expanded dialogue that might be construed as criticism of the EPA. He said perhaps this reinforces what the Council heard during the compliance and enforcement process, that the EPA is the 800 pound gorilla. He further stated that on behalf of the subcommittee he would like to thank DIR. SIMONICH and all the agency people who have been involved in assimilating the huge amount of information for this study.

SEN. DOHERTY asked DIR. SIMONICH how many times in the last five years the EPA has over-filed an enforcement action in Montana?

DIR. SIMONICH said he didn't know but he could find out. He said the state's problem with the EPA is not necessarily with over-filing, it is the oversight that occurs when the EPA questions whether a settlement is right. The department currently has a case where a particular mine is anxious for the DEQ to take enforcement actions so the EPA does not. The mine is not violating state law, but is violating federal law. The industry is afraid of who is going to do what, and if there is a chance that it is going to be done twice. Industry would be assisted if

these kinds of concerns were cleared up. MR. SIMONICH then repeated that if SEN. DOHERTY would like information on the numbers of over-filings, he could find out. SEN. DOHERTY said he would like that information. He then asked if there really was a chance an enforcement action could be taken twice? He asked who becomes the primary player once there is an over-filing?

DIR. SIMONICH said that once there is an over-filing, the EPA becomes the primary player, but two actions may still be taking place. With the case against Zortman Landusky, the state originally filed in state court and in that particular case the state eventually invited the EPA to over-file. They over-filed in federal court and were joined by the department. So the state and the EPA went through the suit together, and when a settlement was reached, it was entered in federal court and done away with in state court as well. MR. SIMONICH stated that there have been other cases where the state has taken an enforcement action, negotiated a settlement, and the EPA rejected the settlement and asked the department to increase the penalty or the EPA would over-file. He stated it put the department in a difficult position--it hurts the DEQ's credibility with the people they negotiate with. He said he realizes the DEQ must pay very close attention to what the EPA guidelines are for enforcement actions under the federal programs the department has been delegated and to continue to work with the EPA to establish penalties the department thinks is reasonable.

SEN. DOHERTY stated that if the state has invited the EPA to over-file, there doesn't appear to be a conflict--it is a clear indication that the department wants their assistance at that point.

DIR. SIMONICH agreed. He said when he provides the information to SEN. DOHERTY, he will provide both a list of over-filings, as well as any of those the department requested.

MR. NOBLE said that if there is an over-file, he assumes that the person the department has been negotiating with is aware that there is that potential, so there should be no embarrassment for the department.

DIR. SIMONICH said in some cases it is difficult to act as the negotiating party, to come to a resolution, to negotiate in good faith, and then walk away, come back and say, "Sorry, the department can't do that after all." It is not so much a matter of embarrassment as loss of credibility. The department is now careful to closely follow the guidelines to prevent that situation from occurring.

MR. NOBLE asked what the amount of the EPA over-filing was in DIR. SIMONICH'S example. MR. NOBLE It was stated that the department was going to tentatively settle for \$100,000 and asked what the EPA asked for?

DIR. SIMONICH stated he didn't remember the exact figures. It was \$100,000 over what the penalty was. He said the department is introducing legislation to assist with this problem--giving Montana the ability for an assumption of continued violation. He said Montana law didn't let the department go far enough on its own authority.

SEN. GROSFIELD said he saw, in the example described, how the regulated communities could hear a story like that and wonder where they stand. That was the whole problem the committee was trying to address. He then asked why Montana had an EPA Office while other states did not.

DIR. SIMONICH said he didn't know how Montana was selected. Every region is different. Some regions have Operations Offices in every state. Others have very few of them. Region 8 only has an Operations Office in Montana. He said that a year or so ago, the EPA administrator, CAROL BROWNER, was looking at expanding one of the Operations Offices, and interviewed the department to see what kind of relationship it had with the EPA and if it wanted to keep a regional office in the state. The department gave it very high marks and said that it was very valuable having it close at hand.

MR. NOBLE asked for additional questions, then thanked the agencies for their assistance with the compliance and enforcement study.

EQC LEGISLATION

Compliance and Enforcement Reporting

MR. NOBLE asked MR. EVERTS to go over the EQC enforcement bill.

MR. EVERTS said he was the drafter of the legislation on reporting requirements. He said he took a look at recommendation C4 on page 20 of the handout and used it as the basis for the bill. In the "Whereas's", he attempted to explain why the EQC made the recommendation that is in the bill. Most of the "Whereas" language is taken directly from page 8, section two of the findings. When addressing the reporting requirements, the staff tried to identify a section that would give the Council and the departments the flexibility of determining what they wanted

from this report, yet still provide some guidance. The recommendations state that the agencies should report annually. That can be changed. The “Whereas’s” can also be changed or taken out.

MR. NOBLE asked for comments from the Council.

MR. TOLLEFSON said the main thing is to require reporting, but he would also be amenable to include a “Whereas” that says something like “whereas good enforcement and compliance programs usually had good and concise reporting and good education programs.”

MR. NOBLE asked SEN. GROSFIELD if that wasn’t what he was suggesting as well.

SEN. GROSFIELD said yes. He said the findings showed agencies that did a good job reporting also had good education programs. What the legislation addresses is general.

REP. KNOX said it would seem logical that if the tone is going to be softened, it would be in the latter part of the “Whereas’s”. It could also be added that there have been processes put in place that it appears are going to be effective. But the Council has no way of evaluating that without a reporting process.

MS. SOUVIGNEY suggested including one of the positive findings as another “Whereas”.

MR. NOBLE summarized that the general opinion of the Council was to put in a “Whereas” that reflected some of the positive findings from the study. He then asked for more comments.

SEN. MESAROS asked REP. KNOX whether there had been discussion on whether the reports should be published annually or biannually.

REP. KNOX said both options were discussed. His feeling is that the Council should have a report in a relatively short time frame, perhaps this July or August 1st. It would be very timely to have a report this summer that the EQC could review, and from that point on, it can be decided whether it should be annual or biannual.

MR. TOLLEFSON said that it was MR. ARRIGO’s suggestion that the reports be annual for a couple of years and then maybe make them biannual. He said he would like to see one in July and then go to biannual reporting.

REP. KNOX said that biannual reporting could give a little clearer picture because there is a greater time frame. But he also noted that MR. ARRIGO believed annual reporting was necessary for a while for everyone to have some degree of comfort. Some discomfort may be alleviated by asking for a report within this relatively short time frame between July 1st or August 1st.

MR. NOBLE asked REP. KNOX for his specific recommendation.

REP. KNOX said he would be comfortable with biannual reporting.

REP. COCCHIARELLA stated she agrees with biannual reporting but thinks March of 1998 would be a better first report time. That provides the departments with at least a year's worth of numbers. It also gives the EQC the time to review the report before the session, it gives the agencies more time with the computer issues, and would be completed before agriculture's busiest time.

REP. KNOX said that his concern is that there are a number of processes in place. He personally feels more comfortable having a review of those processes in a shorter time frame than waiting until March of 1998. He feels that will be ample time prior to the session to review and make recommendations.

REP. COCCHIARELLA said the Council is not responding to the concern MR. GINGERY had about asking the Department of Agriculture to make a report to the Council in the middle of their busiest time year.

REP. KNOX said he shared that concern. However, he said, since the process is ongoing, eventually a lot of the work can be done prior to the busy season.

REP. RYAN questioned whether the Council was talking about a date that says no later than August 1st, so if the department wishes, it can get it out sooner.

REP. KNOX said that the date the Council sets is probably going to be the date it will receive the reports. He said since MR. GINGERY is still at the meeting, he would like to hear more on how it would actually work within his department.

MR. GINGERY said that they would obviously do it, no matter what date the legislature set, but a March date would be easier, both because of the busy summer season and the end of the fiscal year falling at that time as well. A March reporting date also allows the department the time to resolve all of the cases it has done that particular summer.

MS. SOUVIGNEY brought up SEN. GROSFIELD's question again, on what the Council will do with the report once it is received. If the report is not received until August, it does not give the Council much time to put it in a form to give to the legislature. An earlier date may give them more time to pull all the information together.

REP. COCCHIARELLA said MR. GINGERY brought up another issue, whether the departments compile information for the calendar year or for the fiscal year. She asked, why

have them give a report in July when the numbers ended last January? Maybe the report should be delivered to the Council in February.

MR. TOLLEFSON said he would like to go back a little bit. The purpose for the reporting is not just to show the EQC a bunch of numbers, but to develop a coherent reporting system so the agencies themselves have a better idea of how well they're doing with enforcement and compliance. If the departments do develop and implement reporting systems that make sense, it shouldn't be labor-intensive once they have gotten the system in place. He said he thinks once some of these recommendations are implemented, the departments have made it over the first hurdle, so the focus now should be getting to that point.

MR. NOBLE explained that MR. EVERTS has a way out of the dilemma.

MR. EVERTS said he consciously did not put in a date certain in this bill, because of the very issues being discussed. The Council has the ability, especially on this first report, to get back together in May. Many EQC members will be in a Legislative Session for the next several months, as will agency staff, so July 1st would be a fairly quick turn around for the agencies. He suggested the Council and the agencies meet at the beginning of the interim to decide whether annual or biannual reporting works and to decide on a date. He said it is not necessary to specify a date in this legislation, and that gives the Council the flexibility to gather later and work with the agencies.

MR. NOBLE asked if that made sense to the Council.

REP. COCCHIARELLA said she believes consistency in reporting dates is important so the numbers can be compared. When the system for reporting is set up, a consistent date should be established.

MR. NOBLE asked the Council to make a motion to accept the bill as discussed, with proposed changes.

MR. TOLLEFSON noted that he assumed that MR. EVERTS was comfortable with the changes that were discussed.

MR. EVERTS said he would make the changes and send out the legislation again, and then get feedback from Council members prior to finalization.

MS. SOUVIGNEY clarified that the changes were that a positive "Whereas" would be added, and the reporting period requirement would be changed to biannual.

MR. TOLLEFSON made a motion to accept the bill with changes and approve its presentation to the legislature.

REP. KNOX seconded the motion.

A vote was taken and it was unanimously decided to do so.

MR. NOBLE said that someone needed to carry the bill. He said REP. KNOX and SEN. DOHERTY currently have their names on the bill.

REP. COCCHIARELLA said she would co-sponsor the bill.

Water Information

MR. NOBLE asked MS. WILLIAMS to address the Council on the water information bill.

MS. WILLIAMS said that at the last EQC meeting, the staff of the Natural Resource Information System asked the Council for assistance in changing the authority for the Water Information System from Department of Natural Resources and Conservation to the Natural Resource Information System (NRIS). The Council made a motion to sponsor the proposed legislation. EQC staff has drafted a bill based on suggestions from the NRIS staff. ALLAN COX is here from NRIS to answer any questions about the legislation. The Council needs to decide if they approve this bill, and to designate a sponsor.

MR. NOBLE said that the Council had reviewed the bill at the last meeting, and the members agreed to sponsor the legislation. He noted that JIM STIMSON and MR. COX were there to answer any questions.

REP. COCCHIARELLA asked MR. STIMSON or MR. COX where they anticipated opposition to the bill.

MR. COX, NRIS Director, said he did not anticipate any opposition to the bill. The change effectively removes the statutory requirement from the Department of Natural Resources and moves it to NRIS. He stated they had spoken with officials in that department, specifically with the administrator of the Water Resources Division, and he conferred with DIRECTOR CLINCH. They are in agreement with the bill. He said NRIS has done it for nine years now and this is really a housecleaning measure.

MR. NOBLE said the Council has already accepted the fact that they are going to do this at the last meeting and now it only needs a sponsor.

SEN. MESAROS volunteered to carry the bill.

GRAZING PRACTICES WORK GROUP UPDATE AND DISCUSSION

MR. EVERTS introduced WARREN KELLOG, who is the facilitator for a group that has been discussing grazing BMPs. He said MR. KELLOG is a federal employee on loan to the DEQ and has received an EPA stewardship award for this group's work.

MR. KELLOG said he is with the Natural Resources and Conservation Service, formerly the Soil Conservation Service, or SCS. He has been working with the DEQ for the past five years on their Nonpoint Source Water Quality Program. MR. KELLOG then introduced TIM BOZORTH, state hydrologist for the Bureau of Land Management in Billings, and BOB HANSON, with the Montana Farm Bureau and a rancher outside of White Sulphur Springs. MR. KELLOG attended the meeting to discuss the work of the Grazing Management Work Group, which he has facilitated for the last four years. He said in 1992, there was a lot of discussion at the federal level on the reauthorization of the Clean Water Act. Part of that discussion included nonpoint source water quality. Grazing is one of the causes of nonpoint source water quality impairment in Montana, primarily because it is a dominant land use. He said in 1988, Montana developed their first Nonpoint Source Water Quality Management Plan, which essentially adopted SCS's technical guide and their list of management measures as the official state BMPs or Best Management Practices for nonpoint sources. But SCS's grazing practices were not recognized by other agencies, and the SCS's grazing practices technical guide was vastly out of date and inadequate to meet the needs of the grazing lands in Montana. Therefore there was a real need to develop a grazing standard for Montana by those who know the state. To remedy the problem, the Water Quality Bureau, Nonpoint Source Program developed the Grazing Practices Work Group. (EXHIBIT 1A) The primary goal of the working group was to develop a set of minimum grazing management measures for site-specific conditions to maintain and protect water quality on grazing lands in Montana. The group emphasized voluntary application. MR. KELLOG handed out a copy of the prescribed grazing standard the working group developed. (EXHIBIT 1B) He stated this has been the first successful effort like this in the west and the group has had inquiries from many other states and organizations. The group also recently had GOVERNOR RACICOT, the Bureau of Land Management Director, and the U.S. Forest Supervisor in Montana sign a joint letter of cooperation promoting the use of this standard throughout Montana. MR. KELLOG stated that the Grazing Practices Work Group has been reconvened to talk about the possibility of using

grazing reviews, or audits. The group has only met once on that issue, and has not made any recommendations at this time. MR. KELLOG then asked for MR. BOZORTH'S comments. MR. BOZORTH said the Bureau of Land Management got involved in this process for the same reason that MR. KELLOG discussed earlier; the reauthorization of the Clean Water Act. At the same time, the BLM was considering developing grazing practices that protect water quality and fish and wildlife habitat. And through discussions with the federal-state interagency coordination group and the Nonpoint Source Task Force, which is now the Watershed Resources Coordinating Council, it became clear that it would be better to develop grazing practices in concert with other interested parties. The Bureau of Land Management has a Memorandum of Understanding with the DEQ to implement Best Management Practices on public lands that meet or exceed the state BMPs. The BMPs the group has developed have recently caught the attention of several national agencies and organizations.

BOB HANSON introduced himself as a representative of the Montana Farm Bureau and the ranching community. He stated that the biggest fear of the group he represents is that a grazing management program would become regulatory rather than voluntary, i.e., that the group would move from addressing water quality into managing land and grazing. One difficulty of developing BMPs is to find a standard suitable for a state as diverse as Montana, both in its geography and its population. In promoting the idea to the private sector, it is presented first as a plan to promote the goals of a land management operation, and then after it's completed, relate that to water quality. The group established minimum standards, then participants can go to any level above that. The technical manual can be used as a guideline, without agency oversight. If it is used with a person trained in range science, it qualifies with the rules. It is possible to educate farm organizations and stock organizations, but two groups that will be hard to reach are the large landowners from out of state that don't adhere to or listen to what the group says, and the small landowners that have twenty acres in subdivisions, that, for example, have a horse in a backyard that gets highly overgrazed. Those are the two segments that are not reached in the group's educational efforts. Another problem is promoting cooperation in areas with large concentrations of wildlife. A landowner with a good conservation and grazing plan, that has a lot of feed on the property, will be guaranteed as many as 500 elk visiting. That is a concern that remains unanswered.

REP. KNOX said that he appreciated the difficulty of conducting this sort of effort. He also stated that he is interested in the TMDL issue, and wonders what impact voluntary BMPs for grazing might have on water quality.

MR. HANSON said he didn't know. Under a grant from the Water Quality Program and the U.S. Geological Survey, the group spent \$41,000 testing just the Smith River, so the state can't afford to test every river in the state. On the fork of the river that was studied, there is a piece of ground that is highly overgrazed. Water testing did not indicate overgrazing. He said he is concerned that if they do not get the expected results from BMPs, then regulations will be enforced.

REP. KNOX asked what type of soil and slope etc. was on that parcel of land.

MR. HANSON said there was quite a bit of slope and sandy soil. He said there is also a heavy concentration of brush that may act as a filter.

MS. SOUVIGNEY asked if the state had a process to measure whether they're moving toward this water quality goal?

MR. KELLOG replied that the state is looking for a way to do that. The working group was convened to look at not only educational opportunities, but also at ways to evaluate the success of the goals and objectives and perhaps to look for some sort of technology that can be used as an information and educational tool, as well as an evaluation tool.

MR. MARX complimented the three speakers on their perseverance. He then asked MR.

KELLOG, if the standards are accepted in a widespread fashion, what efforts are ongoing to spread the gospel.

MR. KELLOG replied that before he talks about those efforts, he would like to point out that one of the premises the group has been working on is that streams and rivers in Montana can accommodate both livestock grazing, recreational fisheries use, and other water uses. The challenge, he stated, now that the document is complete, is to get the word out. The working group initially considered doing that work themselves, but decided there were other groups in Montana, such as the Montana Riparian Association or the USDA's Grazing Lands Conservation Initiative that are better able to perform that function. In addition, the Nonpoint Source Water Quality Program at DEQ has a strong information and education component to it. The Montana Farm Bureau also offered to help.

MR. HANSON said he is also chairman of the Grazing Land Initiative. The group has a budget and a grant program for demonstration projects with the conservation districts to present information on water quality projects, grazing, different kinds of grasses, etc.

SEN. MESAROS asked if the University system, in particular the extension services, have been included in this information delivery?

MR. HANSON said that both the extension agents and the conservation districts are actively involved.

REP. COCCHIARELLA asked if there were incentives for private citizens to get involved in these practices?

MR. HANSON said he has a verbal commitment from Mr. Thomas, formerly from the Water Quality Bureau, that if a landowner was not complying with water quality standards, and was using BMPs, they would help locate the problem rather than levy a fine. Under state statute, a landowner can be fined \$25,000 per day for noncompliance. That may be an incentive.

SEN. GROSFIELD asked if the organizations associated with the group members, for example the Forest Service and the BLM, have accepted the standards, or if it is just the group members.

MR. BOZORTH said that the organizations have reviewed and approved them. This summer a joint implementation letter was signed by the regional forester, a 6L??? officer, the Montana Bureau of Land Management state director and the Governor to implement these voluntary practices and use this approach in trying to deal with grazing management.

SEN. GROSFIELD asked if ranchers could expect the approach of federal agencies to be tempered with someone using grazing BMPs in the same way the state had given its assurance that their actions would be tempered.

MR. BOZORTH said they now have an approach to developing grazing systems that enables the permittee and other affected interests, including federal agencies, to look together at a piece of ground and determine what measures are necessary to protect and maintain water quality. It is intended to prevent the problems and litigation that are caused when people are not communicating.

SEN. GROSFIELD asked, since the agreement with the state is verbal, what is the liability?

MR. KELLOG said the Nonpoint Source Program in Montana is purely voluntary. The department, through watershed planning efforts with local conservation districts and local groups is encouraging the use of this grazing standard in a voluntary, nonregulatory approach.

MR. MARX said the question arose on what kind of incentives landowners have to participate? The group has a document, the *Riparian Grazing Success on Montana Ranches*, that explains the full range of reasons why landowners participate. The document cites specific success stories about how range practices were modified and how landowners benefited, for example, by conserving soil, fewer weeds, fewer calves lost by falling from eroded streambanks. Many longtime traditional ranchers have participated: the Bannister ranch, the Wilson ranch, the Rukoff ranch. Several other groups are also participating in grazing improvements, including Plum Creek, who is so proud of their BMPs that they believe they “grow fish that are larger than their cows,” and the Montana Grazing Lands Conservation Initiative. MR. MARX said he thinks what’s going on with grazing practices and riparian management is one of the best-kept secrets in Montana, and he believes the efforts of the Council should be spent to help focus a statewide discussion on riparian management and grazing BMPs.

MR. NOBLE asked for other comments.

SEN. DOHERTY asked if it was so that if he wanted to lease a piece of ground from Plum Creek, the BMPs are mandatory, but if he wanted to lease a piece of land from the state, the BMPs are voluntary?

MR. KELLOG said initially their intention was to get specific on different parameters of grazing, like stubble height, browse, etc. He said they soon realized two things. One is that grazing land throughout Montana is very different and specific parameters are difficult to define. The other is that the goals of private individuals and mandates by state and federal agencies varied, and the group did not have any authority to supersede those goals or mandates. The group attempted to provide a foundation for everyone by developing the minimum grazing standards. This is what is addressed in the site-specific ranch plans or site-specific allotment management plans. The agencies then incorporate their legislative mandates and their objectives into those.

SEN. DOHERTY asked again, if an individual wants to lease state land, does the state say to the lessee-- “This is what we expect of you when you are using our land?”

MR. KELLOG said the state will use this document as a guide to develop site-specific plans.

SEN. DOHERTY said he understands the guidelines promote consistency on state, private and BLM land, but does the state have actual requirements? He then addressed the question to MR. HANSON.

MR. HANSON answered. When someone leases a piece of property, it is similar to renting an apartment. You must pay for the right to rent it, but you are able to arrange the furniture in the living room the way you want it.

SEN. DOHERTY said that did answer his question. The state recommends that its leased land be treated in a certain way, but does not require that its lands be treated in a certain way.

MR. HANSON said you would have a bureaucracy if you required it to be treated a certain way.

SEN. DOHERTY said he was not advocating any bureaucracy. He just wanted to understand it. He then asked if anyone from the the Montana Wildlife Federation was involved in the working group? He said the interests of the farmers and ranchers appear to be represented, but since the group advocated a balanced approach, what other groups were involved.

MR. KELLOG answered that when this group was originally set up, various interest groups were invited to the table. Some of them, for various reasons, opted not to come. As this work group progressed some others became involved as nonmembers. A Montana Wildlife Federation representative attended for much of the three years. There were many more people involved than what is on the official list.

REP. TASH asked how the state Department of Fish, Wildlife, & Parks was involved. He said the use of grazing lands by both livestock and wildlife was one of the concerns that brought about the Beaverhead grazing suit. He said a balance in this area was needed and asked if there had been some specific recruitment from the DFWP?

MR. KELLOG answered that the DFWP sent a wildlife biologist for the first year.

Unfortunately, they eventually quit showing up. The group tried to keep them involved, but without effect. They did have some very valuable input at the beginning.

MR. MARX said to MR. HANSON, going back to another point, that on state lands, the department can not renew a lease if they feel that lease has not been operated in good stewardship fashion. They do have some authority in that respect, correct?

MR. HANSON said that was right. There is a minimum level of care.

REP. KNOX said it was mentioned briefly that there were some environmental organizations involved. Many attend these meetings. Are they aware of your process and have they taken a position on the final product?

MR. KELLOG said the Fisheries Society, the Wildlife Federation, and the Wilderness Society have been involved. Now that the standards have been developed and the group will now be

promoting distribution, they plan to reevaluate the membership of the group. It will end up with a different configuration.

REP. KNOX thanked the working group for its efforts. He said he believed voluntary BMP's will be used more and more in the future. He also said he supported MR. MARX'S suggestion that the EQC support the process.

MR. NOBLE said it may be a good idea to draft a resolution. He then asked MR. MARX where he received the pamphlet on riparian and grazing management that he referred to.

MR. MARX deferred the question to MR. HANSON.

MR. HANSON said one is from the Grazing Land Initiative through the MSU Extension Service, and he thought the riparian brochure was out of Missoula.

MR. MARX said it was available from the DNRC in Helena.

MR. NOBLE asked MR. MARX if he would get a copy for the Council this afternoon.

MR. MARX agreed to do so.

MR. NOBLE said it is always a challenge to know how to get information out. He suggested using schools or 4H groups. He said the EQC just completed its publication, and was wrestling with where to send the copies. He added they have done a commendable job.

MR. HANSON said they have targeted the industry people, so it is possible that the public has not seen it.

MR. NOBLE said the Montana Grain Growers are now meeting in Great Falls and asked if they have a booth there.

MR. HANSON said no. In their budget they target people that have the most cattle.

MR. NOBLE asked if there were other questions or comments.

SEN. GROSFIELD said the Council could compose a resolution for the legislature or just make a recommendation to next year's Council. SEN. GROSFIELD then asked for more information on how the DFWP was viewing this final product and how might they utilize it in their various mandates. He said he believed the Council could assist with the dissemination of the information. He didn't know if that needed a motion or not.

MR. NOBLE asked SEN. GROSFIELD to make a motion.

SEN. GROSFIELD so moved.

REP. BILL TASH seconded the motion.

MR. NOBLE said the motion has been made and seconded that the Council make a recommendation to the legislature and asked for any more comments.

SEN. GROSFIELD said the motion was not to make a recommendation to the legislature, but to the EQC.

MR. NOBLE asked for additional comments.

The motion was passed unanimously.

MR. NOBLE asked for questions from the audience then thanked the gentlemen for their good work.

WATER POLICY REPORT ADOPTION

MR. NOBLE said that MS. COLHOUN was going to give a report on the *Water Policy Report* adoption.

MS. COLHOUN said she would like to present the *Water Policy Report* (EXHIBIT 2) for the Council's thoughts. It's the first *Water Policy Report* prepared by the EQC as the Water Policy Committee's responsibilities were transferred to the EQC last session. The report walks through each of the EQC's four statutory duties. It sets forth the background for each issue and talks about Council action. She stated the report is short this interim because the EQC acted merely in an oversight role. She added there will be additional information in the appendices. She then turned it over for the Council to adopt or not adopt.

MR. NOBLE asked for questions or comments from the Council.

MS. COLHOUN added that she could walk them through the report if they wished.

MR. NOBLE asked if there are any Council members that would like that, or could he have a motion to adopt?

MR. TOLLEFSON moved that the report be adopted.

SEN. MESAROS seconded the motion.

MR. NOBLE asked for a vote. The motion was passed unanimously.

LEGISLATIVE FINANCE COMMITTEE'S ACTION ON THE RIT STUDY BILL

MR. NOBLE said that MR. EVERTS was going to talk about the Legislative Finance Committee's (LFC) action on the Resource Indemnity Trust study bill.

MR. EVERTS said the bill was discussed at the last Council meeting. The LFC, after reviewing the recommendations of the RIT Subcommittee, which included REP. RYAN and SEN.

GROSFIELD from the EQC, and REPS. GRADY and RANEY, decided to recommend an interim study bill. (EXHIBIT 3) The bill provides for a membership structure and a broad and

encompassing study mandate. Currently the EQC staff, which is responsible for drafting RIT legislation, has three appropriation bills from the budget office on RIT, a bill from REP. RANEY, and two bills from SEN. KEATING. Three bills are related to organization of the structure of the allocation, and one of SEN. KEATING'S bills is a repeal of the tax itself once the trust reaches \$100 million.

MR. NOBLE said the bill sets up a trust committee.

MR. EVERTS said it sets up a Resource Indemnity Trust Committee with members from the LFC, Revenue Oversight, the EQC and general membership of the legislature.

MR. NOBLE said, then one of the EQC's senate members and one of the house members would each be on the study group.

MR. EVERTS said that was correct.

MR. NOBLE asked if there were any questions.

MR. EVERTS said the LFC staff would take the lead in staffing but they have requested that LEPO support them. If this legislation passes, the LFC staff, Revenue Oversight, and the EQC staff would be helping in this study.

MR. NOBLE clarified that no action is required from the Council.

MR. EVERTS said that the EQC does not have to take any action, or they could say they support the bill.

MR. NOBLE asked if there were comments or questions regarding support of the LFC bill.

REP. ORR said he thinks the EQC should support it.

MR. TOLLEFSON said it "seemed a reach," without more information, for the EQC to support it.

MR. NOBLE asked SEN. GROSFIELD, a member of the RIT Subcommittee, for his opinion.

SEN. GROSFIELD said it was difficult to support the study bill without information on the other three bills.

REP. KNOX agreed with SEN. GROSFIELD.

MR. NOBLE said it did not appear that the Council wanted to support the bill, but asked REP. ORR if he would like to make a motion in its favor.

REP. ORR said no.

SENATE BILL 382 STUDY REPORT - DEQ

DENISE MILLS introduced herself as the Remediation Division Administrator with the DEQ. She said she started at the department midway through the Senate Bill 382 study and so has brought along CINDY BROOKS, legal counsel for the DEQ, who participated in the state and federal caucus for the study, and PAGE DRINGMAM, an attorney from Helena, who participated in the GOP caucus for the study. She said the SB 382 study group worked on two documents; one on funding and one on the liability options. The documents are still being refined, and should be finalized next week. The group reached a consensus on a process that involves keeping strict joint and several liability, but added a new option that allows for a fair apportionment to occur earlier in the process than what is now provided in CECRA. All four caucuses had given their approval to drafting consensus legislation. She said DEQ will do the legwork on the process bill and the PRP?, on the funding bill. The handouts provide a summary of the two working documents. (EXHIBIT 4). The first page is entitled "Safeguards," and the second is entitled "Eligibility."

MR. NOBLE asked Denise to explain to the Council what CECRA was.

MS. MILLS said CECRA is the state superfund law and the acronym stands for Comprehensive Environmental Cleanup and Responsibility Act. Under the new process developed, apportionment will be triggered by written petition from the Potentially Liable Persons (PLPs) as defined under the Act. Petitions can be submitted for sites that were issued notice letters before and after the date of the effective?? legislation and petitions can also be submitted for sites without notice letters but that have an approved cleanup plan under the Voluntary Cleanup and Redevelopment Act. As noted on the handout, Federal Superfund sites and natural resource damage claims are ineligible. The process has been developed so that it will not affect the State v. ARCO natural resource damages suit.

MS. MILLS discussed the controlled apportionment option presented on the third page of the handout. She stated that allocation of liability must be completed within 360 days from the date the process is triggered. The 360 day time period ends under Step 6 of the process, and includes provisions for two 30 day extensions. One extension will be allowed for identifying a lead PLP, and one extension during the discovery step. Step one is a triggering mechanism for apportioning liability, and this can be triggered by DEQ issuing notice letters to a PLP or PLPs, or by submittal of a voluntary cleanup plan by a PLP. Once the PLPs have been noticed, they

may nominate other parties they believe are liable for cleanup. The DEQ will then evaluate and issue additional notices, if necessary. At that point the discovery process begins. Once discovery has been completed, the PLPs begin the allocation negotiations. The process is written to encourage voluntary negotiations between the PLPs and, if a settlement can't be reached, then an allocator will be selected to determine responsibility. The allocator can be selected by the PLPs, or if the parties are unable to agree, will be appointed by a court. Once the allocation is completed, or once a settlement has been reached, a stipulated agreement will be drawn up that defines how the cleanup will be performed and who will pay for the work.

The fourth page of the handout shows other major provisions, including opportunities for deminimum and demicromus settlements, exclusions in the process, and an eight year sunset provision which encourages cleanup and cooperation among the PLPs. There is also a citizen suit provision and a definition of the DEQ's role in defending orphan shares. The DEQ will participate in the allocation process and thus will require a full-time employee to work with this new liability scheme. To control DEQ's resources, there is a provision that allows only five petitions to be processed at one time. Additional petitions will be accepted and processed in the order they are received, however, they will be stayed at the discovery process until one or more of the five other petitions that are being looked at have been resolved.

The final page of the handout presents a summary of the funding options. The orphan share fund will be subject to biannual appropriations and will reimburse orphan shares and the DEQ's administrative costs for defending those shares. Short-term funding for the next biennium is estimated to be in the range of \$1 million a year. This funding would come from the Metalliferous Mine Tax, the Mixed Funding Pilot Program that's currently in place from the last session, RIT tax revenue and/or interest, and DEQ fines and penalties. Another option is to provide project-specific funding, such as funding through Reclamation and Development grants or federal funding sources, such as Brownfields grants, removal monies, federal Superfund, or money from the Office of Surface Mines for Abandoned Mine Reclamation. The long-term fund might be financed by depositing a percentage of interest or proceeds from the RIT into an orphan share account or through a Hazardous Substance Tax. MS. MILLS also stated that the Governor supports legislation that will provide a fair liability scheme with the provision that strict, joint and several liability will be retained as a default option. He also supports the short-term funding over the next biennium and has recommended deferral of legislation on long-term funding until the next legislative session, until the agency has an opportunity to work through the process.

Once the work of the coordinating committee is complete, the legislative report will be provided to all members of the EQC, and to both natural resource committees and other interested legislators.

MR. NOBLE asked if there were questions from the committee.

MS. SOUVIGNEY said she had two. First, why is the \$1 million a year characterized as short-term funding. Is it the intent that it will only be used for a year or two? Secondly, how is the allocation of costs different from the existing allocation?

MS. MILLS said the short-term funding account is something the coordinating committee is continuing to evaluate. The sum of the different options is in the range of \$800,000 to about \$1.3 million. That money would be requested for each year in the next biennium to start the program, to work through the allocation process with PLPs, and to manage orphan share accounts if orphan shares are indeed identified. MS. BROOKS can respond to the second question.

MS. BROOKS asked for a clarification of the question.

MS. SOUVIGNEY asked for a description not of how the process has changed, but in particular, the change in the orphan share.

MS. BROOKS said now one party can be held liable for 100% of the cleanup costs. In a fault-based system, that PLP may only have 20% liability, but because of the current scheme, they can be responsible for all the cost. There is currently a provision in the statute for them to have the responsibility allocated, but only through the court system. The process that the committee has developed would take a year as opposed to five or more years as is customary in a court system.

MS. SOUVIGNEY asked for an explanation of what is meant by “allocated.”

MS. BROOKS said there might be five or six parties, who under the state Superfund law, could be held responsible on a site. The way the DEQ now administers the program, only one or two parties may be chosen to do the cleanup. One or more of the responsible parties can file an action in court for contribution, asking for reimbursement from the other parties that could be held liable on the site, but weren't. Right now, there are no orphan shares because of the liability scheme in place. The PLPs have to pick up those orphan shares. Under this process, if there's a certain percentage of responsibility that can't be allocated to someone, either because the party is bankrupt or insolvent, that percentage of costs will be picked up by the orphan share fund, which would be the money that the group is talking about getting from various state funding sources.

MS. SOUVIGNEY said, then the plan is to now allow orphan shares to be established and those shares could be funded from here until eternity by these sources or whatever other sources of money are available to the state to pay for that.

MR. NOBLE asked if there were other questions.

SEN. DOHERTY asked what would trigger the invocation of strict joint and several liability.

MS. BROOKS said it is provided throughout the procedure that if the allocation process begins to fail, strict joint and several liability can come into play. For example, if parties do their discovery, select an allocator, the allocator makes the report, and the parties refuse to sign a stipulated agreement, at that point, the site would be subject to strict joint and several liability.

SEN.. DOHERTY said “That’s the hammer.”

MS. BROOKS said yes, that’s the encouragement to keep the parties moving through the process.

SEN. DOHERTY said that it was stated that this scheme wouldn’t affect the current situation with ARCO. He then asked about future Natural Resource Damage litigation

MS. MILLS said, as she understood it, the Natural Resource Damage provisions would continue to be retained in CECRA.

SEN. DOHERTY asked if all the eligibility triggers on the second page must happen before the process is initiated, or if the separate occurrence of any one would trigger the process.

MS. MILLS said that each one of those could trigger an apportionment process.

SEN. DOHERTY stated that the problem he saw with orphan shares is that somebody must pay for them. He asked then if there was any thought about eliminating entities, or eliminating proposals in which the potential liability for an orphan share would draw all the available funds? He stated that ultimately, the state will have to pay for it, and asked how will it be funded over time so the state will not be exposed to long-term liability unless it can be assured that the money will be there.

MS. BROOKS said the working group looked at a number of different options on shrinking the orphan portion and what to do if there wasn’t adequate funding in the orphan account. One of the overriding concerns was that cleanup not stop. One of the things the group did was kick out

past costs: PLPs can not try to get reimbursement for money that they've already spent prior to the date the legislation was enacted. That shrunk the orphan by about \$10 million. Another safeguard, since it will take 2 to 6 years to build the orphan fund, is that the industry caucus agreed that if there's no money in the orphan share fund for their reimbursement, they'll stand in line until there is. And if there's never any money in the fund, they'll never get reimbursed.

SEN. DOHERTY asked if that agreement is verbal or if it is in the legislation?

MS. BROOKS said it would be in the legislation.

SEN. DOHERTY stated he has a concern about the state becoming liable for cleanup. If the liable parties are protected from paying a lot, the cost may fall on the taxpayers. It seems important for the state to develop criteria for sites that might be eligible so they are not obligated to take on a giant CECRA site.

MS. BROOKS said much time was spent debating where to draw the line on eligibility. She stated she believes all the caucuses share SEN. DOHERTY'S concerns about taking on a large orphan share in the future. She says she doesn't have a perfect answer, but that the group did try to come up with the best safeguards possible.

MS. DRINGMAN responded. Under strict joint and several liability, under various circumstances, for example when a PLP has low financial resources, the state would end up with an orphan share, or unfunded liability. Under the new scheme, there is now a pool of money to address those sites. That is why the working group tried to come up with short-term and long-term funding options. The short-term funding options aren't meant to expire in two years. They're meant to extend into the future. If this scheme is in place for the next ten years, the short-term fund probably won't fund all the orphans. So the group tried to come up with longer term funding. She said they are putting in the statute provisions that there is no claim against the state if there's no money available. It does create somewhat of an unfunded liability, but the group attempted to come up with funds without taking money off the top of the RIT or by affecting agencies' budgets. That is why the group came up with short- and long-term funding.

MR NOBLE asked MS. BROOKS about the membership and number of caucuses.

MS. BROOKS said there were four caucuses: a state and federal government caucus with four members, and a local government caucus, an industry caucus, and a public and environmental interest group caucus, each with five members. There were hundreds of people on the DEQ's mailing list. Altogether, there were nineteen people representing the hundreds of people on

mailing lists. In about four meetings, the large group developed criteria to evaluate schemes and goals. Each caucus nominated one person to sit on a coordinating committee. The committee met biweekly for four or five months and has been meeting weekly since to work on the funding and process documents. It was the coordinating committee members' responsibility to report back to their larger caucuses during the process to make sure that everyone stayed involved.

MR. NOBLE asked if each issue had been addressed and agreed on?

MS. BROOKS said not everyone loves every portion of the documents, but there is a commitment from every caucus to support this legislation based on the documents that have been completed.

MR. NOBLE said then the issues have been addressed in depth and results are supported by people from varied groups.

MS. BROOKS said that's correct.

MR. NOBLE asked if the group expected opposition in the legislature?

MS. BROOKS said if the consensus process was completed correctly, there shouldn't be any opposition.

MR. NOBLE said he has a question on page three: when a lead PLP is designated, is it their responsibility to find other PLPs, for example, in the instance of a 15-year old landfill.

MS. BROOKS said that raises a couple of issues. First of all, the DEQ starts out the process by doing PLP research using established criteria to alleviate concerns that the department would, for example, tend to choose a big name company. It is then the department's obligation to notice everyone who falls under a statutory definition of a liable party. If the PLPs believe the department has missed someone, they have the opportunity to present evidence why that person should be noticed. Then the department must respond and let that person know that they've been notified. The department is also aware of the potential problem of landfills. Generators of household waste are excluded. So everyone who's done nothing more on a landfill than take their garbage will automatically be excluded. They never get noticed because they would have an exclusion from super liability.

MR. NOBLE asked if a person had a company name after their name if they would be included on the list.

MS. BROOKS said it would depend on what records show that the evidence was.

MR. NOBLE asked if , for example, Jerry Noble Tires, Inc. would be on the list of additional PLPs, even though the company doesn't produce hazardous waste?

MS. BROOKS said household waste is defined as waste material, including garbage, trash, and sanitary waste derived from households. A household includes single and multiple residences, hotels, motels, bunkhouses, campgrounds, picnic grounds, etc. MS. BROOKS further stated that if someone is generating waste not from household use as defined, they may not be eligible for a complete exclusion from liability, but it's likely that they would be eligible for one of the early-out settlements referred to as diminimus or dimicimus. In the new scheme, it will be easier for the department to use those than in the past.

MR. NOBLE asked who in the agency decides which PLPs are listed.

MS. BROOKS said the logistics of the new scheme haven't been discussed, but currently, the project officer and the attorney research it, then it goes through the administrator, up to the director, and ultimately the director decides who will be noticed. She stated she anticipates it will be done in a similar fashion.

MR. NOBLE asked if the DEQ collects? fines and penalties, for example, where the fines from Zortman were deposited.

MS. BROOKS said they went to the general fund. The DEQ has proposed a bill this session that would divert those funds from the general fund and would allow the first \$100,000 of fines collected by the department to go into an emergency account that the department could use for various cleanups. Any fines collected over \$100,000 would, under this proposal, go into the orphan share fund.

MS. DRINGMAN said right now those funds go into the general fund, but are not accounted for, since no one ever knows how much those fines will be. So the money isn't being taken from some other program.

MR. NOBLE said he has one other comment to let the legislators mull over-- "If the state takes over Virginia City and Nevada City, will they be responsible for the mine cleanup there?"

MS. SOUVIGNEY asked what would not be funded if money was taken out from the Metalliferous Mines Tax or the RIT Tax?

MS. DRINGMAN said that in 1995, 8.5% of the Metalliferous Mines Tax was diverted to the Metalliferous Mines Account for a voluntary funding program to reimburse, up to a maximum of

\$300,000, any sites on the top ten list of abandoned mine sites that went through a voluntary cleanup. That program was slated to expire in 1997. Under this proposal, that money would be put into this orphan share. If not diverted for the orphan share, it would be returned to the RIT. The group is not sure about the potential revenue increase and the interest off the RIT, and is continuing to discuss this option with JOHN TUBBS, DNRC Resource Development Bureau Chief. The objective of the group is to not have a negative impact on those programs that are funded by the RIT.

MS. SOUVIGNEY asked if this would only be included in the legislation if there were increased revenues?

MS. DRINGMAN said that was right.

MS. SOUVIGNEY asked what the \$2 million would be allocated for: how much of it would go towards orphan shares?

MS. DRINGMAN said it is directed toward ground work to avoid the creation of any kind of board that would require all the money for its functioning. The DEQ actually is the administering agency. To the extent that the DEQ incurs costs, those costs will be spread among the parties and the orphans. For example, if there were three parties and an orphan at the site, and the three parties are determined to be 75% liable, and the orphan is 25% liable, 25% of DEQ's cost would be paid by that orphan, to the extent that DEQ incurred administrative costs in the process, and 75% of the costs would be spread among the PLPs and enforced??? with their liability.

MS. SOUVIGNEY asked if the legislation would include a threshold point in time for orphan shares, when, if there is no money in the account, the other potentially responsible parties can no longer go after the state. She stated she was concerned that there would be a backlog of claims against the state that continue to add up.

MS. DRINGMAN said there are a couple of safeguards. One, the legislation sunsets in eight years: if the program is not successful, it's going to end. Second, the group has included in the statute that a party may not receive interest on a claim or have a claim against the state. She stated it was also an important reason to secure long-term funding.

MS. ??? said it is also hoped that, in addition, the short-term funding projected for the next two years will grow to three or four million dollars a year through the evaluation of long-term funding options and potential RIT funds. Then, in five to ten years, the fund would have,

theoretically, anywhere from \$3 - \$ 4 million a year deposited after the next biennium to be used for cleaning sites and reimbursing the PLPs.

MS. SOUVIGNEY asked if they had any estimate of what the orphan shares would amount to in eight years; she is still concerned about what kind of liability the state has.

MS. ??? said they conducted a cost projection for 39 sites that are on the CECRA list. The CECRA list currently has 278 sites on it; 98 are in the process of being delisted because they've been cleaned up or because they are being referred to other programs in the agency. That will leave about 180 sites on the CECRA list. The group identified 122 sites that are likely to have an orphan share. Of those, there are 39 sites on which there is enough information to project costs for the next 8 years. The group estimated a a middle range of \$49 million for 39 sites. The industry caucus believes that estimate is too high, so that number is still under discussion. The money won't necessarily be needed over the next five years, so projections for estimates have been included for one to five years, six to ten years, and for ten years after that.

SEN. GROSFIELD asked how the 39 sites compare to the rest of the 122; if they were average or bigger or what.

MS. BROOKS said the group developed a cost estimating process. They then chose sites of maximum, high and medium priority. They used those sites on the list of 39 on which they had adequate information and some knowledge of the parties. Then the group costed out low, medium and high costs. A medium cost might be what is actually done on the ground. Then the group estimated what the orphan share, based on medium costs, would be. MS. BROOKS said she also wanted to add that, as sites are delisted, there will be about 180 left on the list. In the current report, 122 are likely to have an orphan. Of those 122, 57 are low-priority sites that will not be looked at for a while. Some were inherited from the federal listing database, and may not need cleanup.

SEN. GROSFIELD said so that leaves about 25.

MS. DRINGMAN said the group did not have enough information to know who the liable parties are or what the orphan share would be.

SEN. GROSFIELD asked if in the discussion on funding options, especially the Metalliferous Mine Tax, was changing the tax rate discussed?

MS. MILLS said no.

MS. DRINGMAN said there aren't many mining sites on the CECRA list. There are landfill sites, mining sites, railroad sites, drycleaning sites, etc. One of proposals is to sometime in the

future develop a hazardous substance tax to help fund cleanup sites like drycleaners, that currently don't contribute to any fund for cleanup. The group did not want to take too much from one particular industry to pay for everyone else's costs.

MS. WILLIAMS mentioned that money from the Office of Surface Mines might be available for abandoned mine reclamation, though there are very strict regulations on how the money can be used. There are several CECRA sites that do involve mine waste cleanup. Some of those sites are in watersheds where there are PLPs, and the abandoned mine reclamation group is unable to use the money in this instance. But there are large watersheds, for example, just north of White Sulphur Springs, Ten Mile Creek, and Base Creek where there may be an opportunity to identify parcels within those watersheds that are clearly abandoned mines where those monies might be used. This is one of many methods to supplement the state's liability for reimbursement and to assist with the backlog.

MR. NOBLE asked where the estimates for cleanup came from and whether EPA figures were used?

MS. MILLS said there are a variety of methods that can be used. EPA provides some figures for what are called presumptive remedies. Those are remedies that are tried and true. They've been tested over a period of ten or fifteen years. And the costs are fairly certain. There are innovative technologies where the costs are less certain. The group did try to come up with unit costs that are based on industry standards.

MR. NOBLE said the reason he asked is that sometimes the EPA estimates on cleanup are way more exorbitant than Montana's actual costs.

MS. MILLS said that the group estimated costs by using a consultant firm from Butte which was one of the industry caucuses consultants, who went to other industry caucus members for exact costs on sites.

MR. NOBLE said the last question he has is if this was to pass and then sunset in eight years, where would the rest of the money go to.

MS. MILLS said the group discussed what it will do if there are petitions and allocations in the process when it sunsets. It has not talked about what to do if there is remaining money, because they assumed that there wouldn't be.

MR. NOBLE said if there is just liability left, where does the liability go?

MS. MILLS said if there's no money in the fund, there would be no reimbursement, and there would be no remaining liability.

MR. NOBLE asked if there were any questions or comments from the public, then thanked the participants for coming.

GROUND WATER ASSESSMENT STEERING COMMITTEE REPORT

JIM STIMSON gave a report on the Ground Water Assessment Steering Committee and the Ground Water Assessment Act. He said since 1991, the Steering Committee has reported on the Ground Water Monitoring and Characterization Program but has never discussed the administrative structure or how the funding structure created in the act is actually working. He said first TOM PATTON and DENNIS MCKENNA will provide brief updates on the progress of the two programs. He also said the goal of the presentation for the Steering Committee today was to ask the Council to review the administrative structure and the funding structure for the Groundwater Assessment Act as a study during the next interim.

MR. PATTON introduced himself as an employee of the Montana Ground Water Assessment Program at the Montana Bureau of Mines. He said handouts are being provided that will guide his part of the presentation (EXHIBIT 5), and there are also maps on the wall. He said he would discuss briefly each of the illustrations. He said the law not only addressed gathering information, but what to do with information once it was gathered. The third part of the Assessment Act deals with transmitting information to users through the Groundwater Information Center. The handout illustrates the number and kinds of requests received by the Center, where the Center is in the development of the water level monitoring network, where the Center is currently working and where it has not gotten to yet.

He stated that sixty-nine water level recorders are in operation. The Center has purchased 44 of those. Nine are operated by the U.S. Geological Survey under a cooperative agreement. Twenty are recorders in various bits and pieces of old monitoring networks that the Center has taken over.

MR. PATTON said the Groundwater Information Center has had a request from the database for every well in the state where there is water less than 30 feet below the surface; about 30,000 wells. The EQC staff used well location and well density information for the Environmental Indicators report.

He continued that on the back page of the handout, there are title graphs for various locations in the state. The well information used for the illustrations all have more than 5 years of data. Long-term information is important for a number of reasons. If the Center receives a complaint about irrigation wells drawing down an aquifer, short-term information may indicate there's a real problem. If the complete hydrograph is compared to climatic data, which is represented by the lower line, it is apparent there was a very wet winter one year, which put three or four feet of water into the aquifer. It took three or four years to transfer that water away. It is difficult to draw any conclusions or to discern patterns without a complete record. MR. PATTON then asked if there were any questions.

MS. SOUVIGNEY asked that aside from the water levels, what other kinds of information does the Center monitor for.

MR. PATTON said they are monitoring and beginning an inorganic water quality record for many areas of the state that do not have records, for example, a string of wells along the Yellowstone River in Park County, just north of Yellowstone Park. They also collect information on radon, nitrate as nitrogen in the water, plus a standard chemistry for the water. MR. NOBLE said thank you.

MR. MCKENNA from the Montana Bureau of Mines and Geology, spoke for the Groundwater Characterization Program. He said the intent of the Groundwater Characterization Program is to provide a great level of detail for individual aquifers in specific areas of the state, rather than looking at the big picture, as is done in MR. PATTON'S program. The Characterization Program provides baseline water quality data, for example, where the aquifers are and what the water levels are. The program tries to finish an area each year, and spends three years in each area. Fieldwork began in Eastern Montana, then moved to the Flathead Lake area comprising Flathead and Lake Counties and the Flathead Indian Reservation, and is now working in the Billings area--Treasure and Yellowstone Counties. The handout (EXHIBIT 6) shows some of the program's accomplishments. The source aquifer in the Yellowstone region has been identified. There are 8,500 wells in the area: field personnel visited almost 20%, or 1,500 of those wells. He stated that the Groundwater Characterization Program also prepared maps showing the location, the depth and the fitness of the four principal aquifers in the five counties in the Yellowstone area, and has done similar work in Flathead and Lake Counties. In the

Flathead area, program personnel visited about 1,000 of 14,000 wells and collected about 230 samples.

He said that on the second page of the handout, there's a map that says "Altitude of the Fox Hills-Lower Hell Creek Aquifer." The handout compares a good map done by the U.S. Geological Survey in 1982 with a map done by the Groundwater Characterization Program to illustrate in how much more detail the program is able to graph aquifers. The program did not discard the 50 existing data points of the USGS, but added another 450 data points to determine the elevation. Then the program went the next step, using a GIS computer system, to determine the depth. He said he believes the major goal of the characterization program is to provide people information that they can use directly, particularly local people. They intend to publish a ground water atlas at about the scale of the illustration on the handout for the area, with the primary goal of explaining the ground water resources in the area. It will also be possible to get a map which will show much greater detail and allow people to find out how deep to drill a new well, if, for example, they purchased a new ranch. In some places it's 2000 feet, which might be prohibitive, but that will be some of the information available. Because the maps are expensive, the plan is to provide local organizations, conservations districts, county commissioners and water quality districts with a set.

REP. TASH asked if there was any information available from logging and oil exploration.

MR. MCKENNA said yes, a lot of the 489 points are oil wells.

REP. KNOX confirmed that the program is monitoring water quality in all these wells.

MR. MCKENNA said that in all the wells that are visited, they are pumped whenever possible and a complete analysis is conducted.

REP. KNOX asked for how many years this has been ongoing.

MR. MCKENNA said since 1994.

REP. KNOX asked if there were any surprises regarding water quality.

MR. MCKENNA said in the Yellowstone Area, it is interesting that most of the water in the aquifer is 10, 20, 30,000 years old. That has some implications about the use of the water and its potential for contamination. And the water moves very slowly - at an estimated rate of about six feet a year. In the Flathead Lake area, it was interesting to local people that about 15% of the wells in Flathead County are in bedrock. The program also tries to address the questions of the

local people, for example, questions arose in the Glendive and Sidney area about lowering water levels. Sidney has had some wells drilled recently. Glendive has not.

MR. NOBLE said he has heard a lot about the program over time, but has not seen a lot of results. He asked if at some time they can provide an example of some of the things they have done or any determinations they have made?

MR. MCKENNA said they are currently in the process of mapping and producing reports for these areas. He said they have a list of 25 maps for the lower Yellowstone area and about 15 of them are in some stage of production. In a year, the program should have a full report.

MR. PATTON said the Monitoring Program is different. Because they are measuring trends, the work is never complete. Also, the information is provided on an as-needed basis, for example, for the DEQ's 305B report. The work is ongoing. When the questions come, the framework is there to work with.

MR. NOBLE said thanks and he appreciated the report.

MR. STIMSON provided a handout on the administrative structure of the Ground Water Assessment Act Program (EXHIBIT 7). He then commended MR. PATTON and MR. MCKENNA for their leadership and commitment to this work, especially with the serious financial crisis early in the program. He said he believes the Groundwater Assessment Act was one of the most important pieces of ground water legislation ever passed, primarily because it established, for the first time, a comprehensive and long-term approach to assessing the state's ground water resources and monitoring those resources. He continued that the Groundwater Assessment Act also created a rather complex legislative, or administrative, structure. His goal was to highlight that structure. He said the Steering Committee is not requesting that the Council draft legislation for this session, but to consider reviewing the administrative and financial funding structure of the program in the next interim. He said the current structure is problematic in some ways, and may affect the long-term operations of these programs. The handout distributed is organized into two sections. The first section provides background information; a general outline for the proposed interim study; and a copy of the Groundwater Assessment Act and the legislation that establishes the Steering Committee. The second section highlights some of the aspects of the Groundwater Assessment Act and discusses the funding sources. He stated that funds for this program come from the proceeds of the Resource Indemnity and Groundwater Assessment Acts and from the Metalliferous Mines Tax, and that

this funding method was controversial when initiated and has been often reviewed by the legislature. He continued that the programs were designed with a budget of \$660,000 each year, or \$1.3 million per biennium in mind and the estimate of completing the state in twenty years was based on having that amount of funding. He said section 2 also discusses the membership and responsibilities of the Steering Committee. The Steering Committee provides direction to the Bureau of Mines to investigate other funding options. The Bureau of Mines establishes and administers the Groundwater Assessment Act programs. The Assessment Act is clear about what the RIT funding can be used for; it can be used by the Montana Bureau of Mines and Geology only to carry out provisions of 85-2-905 of the Groundwater Assessment Act. The Steering Committee is given responsibility to oversee expenditures from the Groundwater Assessment Account. The responsibilities of the committee also include inviting representatives of local governments and Indian tribes with jurisdiction over areas of the state. For the most part, this has been completed, although the committee still needs to issue formal invitations to the various tribes in the state. Part E, under section 2 outlines part of the role and responsibility for the Bureau of Mines under the Groundwater Assessment Act. They are given the authorization to expend money from the Groundwater Assessment Account, but only to carry out provisions of the Groundwater Assessment Act. Under the Steering Committee, they will investigate opportunities for additional funding. The Bureau of Mines will also work with municipal ??? governments and others to organize local ground water assessment advisory committees.

MR. STIMSON said Section 1 also includes a funding history chart and he wanted to point out several things. The funding mechanism has never generated the full estimated \$660,000. Also, because the figures for each upcoming year are estimated, it is a problem that their operating budgets begin in July but the taxes that they use for revenues are not collected or received until sometime in March, April or May. In addition, it is now December and the program still does not have a hard figure of how much money is available. So, two issues under the funding structure are: 1) that the funding structure has never delivered the full amount anticipated, and 2) that the timing of receiving the revenues is not conducive to operating budgets that begin in July. The programs have responded to the funding shortfalls in different ways. MR. PATTON mentioned 44 water level recorders, but that figure was originally set at 70. The characterization program has responded to the budget shortfalls basically by keeping two positions vacant, which affects the amount of progress that can be made on the ground. Staff time is further drawn away from ground work by the necessity of accommodating these constraints on a routine basis. MR.

STIMSON said as illustrated in the chart on page 5, the administrative structure of the program is very complex. It is basically dual in nature. There are two bosses for this program. Some of the responsibilities of the Steering Committee and the Bureau of Mines appear to overlap; it is not clear who has the ultimate authority. The dual administrative structure works well when everybody agrees, but is problematic when the two parties cannot reach agreement on, for example, project plans or expenditures. In this instance, administration of the program becomes a very time intensive process of troubleshooting and trying to find ways to come to an agreement. Again, time spent administering the programs is diverted from focussing on getting the work done in final form. MR. STIMSON concluded that he believed solving the administrative and funding problems would be difficult, and the issues are not life-threatening, but they do pose some challenges for the long-term operation of the program. He reiterated that the Groundwater Assessment Steering Committee would like the Council to consider conducting an interim study of the Groundwater Assessment program's administrative and funding structures, and consider overseeing the implementation of any suggested changes.

MR. NOBLE asked if there were questions or comments.

MR. TOLLEFSON asked if it would more appropriate to pass this recommendation along to the next EQC, and if so he would make a motion to that effect.

MR. NOBLE asked if there were any more questions, or a second to the motion?

REP. KNOX seconded the motion.

MR. NOBLE took a vote, and it was passed unanimously. He further stated that the Council believes this is a very important project.

LOCKWOOD WATER USERS

MR. EVERTS introduced this topic by saying the Council first worked with the Lockwood Water Users on the issue of water contamination during the 1995 Legislative Session. This June they requested an appearance before the EQC to discuss how they would like to see the laws and policies changed regarding potentially responsible parties and those damaged by the contamination. (EXHIBIT 8A and 8B) To address these issues, RICK RUSSELL, manager of the Lockwood Water Users Association in Billings, DENISE MILLS, from the Department of Environmental Quality, and TIM MORRIS from the Petroleum Tank Release Compensation Board (Petro Board) are in attendance. He stated he had also had a chance to speak with the

potentially responsible party, WAYNE CHRISTENSEN, from Montana Petroleum Supply, who couldn't make it today because he's in the hospital, but would like to remain a part of the discussion.

MR. RUSSELL introduced himself, as well as RICH CANE, assistant manager, and DARLENE KIMBALL, Secretary/Treasurer of the board. MR. RUSSELL said he was here on behalf of the Lockwood Water Users Association and its Board of Directors to discuss the ground water contamination from a benzene spill that occurred in the Lockwood area in 1991.

MR. NOBLE asked the location of Lockwood in comparison to Billings.

MR. RUSSELL said Lockwood is east of Billings and separated from the city by the Yellowstone River. The water supply serves about 8,000 people. The Lockwood Water Users are a nonprofit group formed in 1957. He further stated that 75-10-711, MCA states the Department of Environmental Quality may take action whenever the environment is seeing the result of a hazardous release that may present an imminent and substantial endangerment to public health, welfare or safety. Action was taken by the DEQ in 1991. The department conducted multiple investigations and concluded in 1994 that Montana Petroleum Supply was the responsible party (RP). MR. RUSSELL said the RP continues to reject the expenses of Lockwood Water that are a direct result of this contamination and to his knowledge has not reimbursed the state expenses as required by the same MCA section, 3C. 75-10-715, MCA states that a person is jointly and severally liable for a release of a hazardous waste or deleterious substance from a facility. These same persons identified by the department shall be liable for all remedial action costs incurred by the state, and for damages for injury to, destruction of, or loss of natural resources caused by the release or threatened release, including reasonable technical and legal costs of assessing and enforcing a claim for injury, destruction, or loss resulting from that release. Section 4 of the same statute states that the department may initiate civil proceedings in District Court to recover remedial action costs, natural resource damages, or penalties under sections one, two and three. He pointed out that Lockwood Water feels that the ground water in Lockwood is a valuable natural resource and that, to his knowledge, the department has not pursued recovery of costs from the RP to this date. 75-10-717, MCA states that an emergency responder has the right to recover from the RP the emergency responder's full costs directly relating to a hazardous material incident. Lockwood Water responded to this incident as an emergency and should be entitled to full recovery of its emergency costs. Those costs include involving engineering and legal firms to determine Lockwood Water's steps

toward recovery. These firms were only used prior to the state's involvement when investigating the contamination. Nowhere in the MCA's does it state that the RP shall reimburse to a damaged third party only those costs reimbursed by the Petroleum Tank Release Compensation Fund (Petro Fund) or that only funds reimbursed by the Petro Fund will be the liability of the RP. This, however, is the stance that the RP is taking, and the DEQ thus far has allowed such by the department's actions. The statutes do state that the RP is liable for all costs and Lockwood Water feels that all of the costs it is seeking recovery for fall into this category or are the direct results of the benzene contamination. MR. RUSSELL stated that the Petro Board has made it clear that they can only reimburse funds for the expenses directly related to benzene and that legal costs will not be considered. Lockwood Water recognizes this as fact. However, the Petro Board should not be acting as a mediator, as they have. They have clouded the issue in this case and have given reason for the RP to reject the Association's expenses unless held harmless by Lockwood Water for all expenses other than those reimbursed by the Petro Fund. He said they may have affected the outcome and Lockwood Water's recovery. He said in light of this information and of the experiences Lockwood Water has faced until this date, the group feels that third parties are not protected by Montana's laws relating to hazardous contamination, if protected at all. MR. RUSSELL asked that if a potable water supply was impacted by contamination from an unidentifiable source and an RP could not be identified, what then. He said that Lockwood Water is fortunate that it already had an alternative supply, but the ground water under Lockwood is still not potable because of hazardous material seepage or spills. MR. RUSSELL said downstream users who are purchasing their water have so far been disregarded by the state. This being the case, the Lockwood Water Users feel that legislation needs to be enacted to protect wrongfully damaged parties from contamination of their water supply, whether it is by a known or unknown RP. There are some parties within the DEQ that believe that Lockwood was its own worst enemy because of the location of its wells. The wells are located in the downstream gradient from possible sources of contamination. Those same sources may or may not have existed at the time the wells were punched, and those who drilled the wells relied on the state, counties, and cities to protect their supply from hazardous wastes and believed that they were utilizing a safe and valuable resource for the benefit of its consumers. He said it is unreasonable to claim that they did not use foresight. He said they were like everyone else who believes that valuable natural resources should be protected from hazardous wastes by those who supply and regulate their use. MR. RUSSELL continued that the

Lockwood Water Users believe legislation needs to be enacted that provides for third parties influenced by hazardous waste contamination by outside sources. He said currently the laws of Montana do not consider the third party at this time. Currently the laws provide for the DEQ's response, the DEQ's responsibilities in investigating potential RP's, and the RP's responsibilities once identified. The contaminated party has no legislation to rely upon if an RP is not named by the state. There is no recourse for a third party once their water supply has been contaminated and there is no identifiable RP. He said this is just the scenario Lockwood is facing with solvent contamination. He hopes to help others facing the same problem in the future.

MR. NOBLE asked for questions before the DEQ made its presentation.

REP. TASH asked about MR. RUSSELL'S reference to heating water.

MR. RUSSELL said he was referring to the intake heating system.

REP. TASH asked what the purpose was.

MR. RUSSELL said Lockwood has a submerged intake that's located in the Yellowstone River. Engineers designed it so that the water users could use the ground water supply as a source of warmer water. Ground water is usually at a 50 - 55 degree temperature. The water that comes down the Yellowstone River can become heavy with ice flow, and according to the engineers, ice crystals may form that can plug an intake. The intake system was designed to assist the system in supplying ground water by preventing the formation of ice crystals. The benzene coming from the wells contaminated the intake system and thus the water supply of the Lockwood Water Users. The intake heating system that is referred to was furnished by funds from the LUST Program, and now uses the water out of the Yellowstone River. MR. RUSSELL said actually it is a replacement for the ground water system.

MR. NOBLE said he was confused about how the water users were obtaining water.

MR. RUSSELL said Lockwood Water had the river as an alternative source. They do not have a water right. They have a water appropriation permit because the city of Billings has taken in all of the reserves for the Yellowstone River for years; they have appropriated for around 3 million people. Getting a permit, or a reservation, is nearly impossible without leasing a permit from the city of Billings, or getting them to let go of some of their reservations. They will not do that. Right now the water users are able to use water from the river, but if they ever had to cut back because of water reservations or low instream flows, the wells are an important alternative source. He said the Lockwood Water Users would probably, on their bond issue, be required to

present reserves over expenses by 125% back to the bondholders. They could be charged with forfeiting their bond issue because they didn't sell enough water. The intake heating system now takes about \$9,000 to \$10,000 a year during just three or four months of the winter to keep ice from forming on screens. Before the contamination, the well cost approximately \$35 - 40 a month to run.

SEN. DOHERTY asked if it was correct that their problem could be solved by getting their water supply from Billings.

MR. RUSSELL said no, because the city of Billings would have to annex Lockwood.

SEN. DOHERTY asked if the real irritation was that Lockwood didn't want to be part of the city of Billings.

MR. RUSSELL said he believes that's right, that the people of Lockwood don't want to be a part of Billings, Montana.

SEN. DOHERTY said that is an issue for the Local Government Committee, then clarified that MR. RUSSELL'S groups main complaint is that they have been trying to get somebody to do something for four years?

MR. RUSSELL said actually, it started in 1991, and it took them two years to get the DEQ to complete a study. It will probably take several more years for the RP to pay for the damage that they are responsible for. Also the ground water is no longer usable. He said it is their position that the ground water is tainted, someone is responsible and the downstream users may not be aware of it.

SEN. DOHERTY asked if MR. RUSSELL had an idea of who the responsible party is?

MR. RUSSELL said he thinks they would find multiple responsible parties in the case of solvents. One party has been ruled as responsible for the benzene contamination. That party claims that there should be other RPs, but he has been ruled wrong.

SEN. DOHERTY asked MR. RUSSELL who he thought was "asleep at the switch"?

MR. RUSSELL said it is his group's opinion that the legislation doesn't provide for the protection of a natural resource if a responsible party is not identified. He said he thinks it is wrong for the responsible party to not pay the aggrieved party until they have been reimbursed by the Petro Fund. The dispute should be tried in court. He said he also thinks there should be more investigation of the solvent contamination. There are solvents there that didn't have a certain ground water source. MR. RUSSELL said the water users were not really looking for an

alternative supply of water, only if the benzene was a problem. Then the solvents were identified as a problem and nobody's doing anything about them.

SEN. DOHERTY clarified that the water users' concern is there is a source of solvents in the ground water, the DEQ knows about it, and they would like to know what the department will do about it. He then asked if it was necessary to speak with the DEQ.

MR. NOBLE said DENISE MILLS is available from the DEQ.

MS. MILLS, administrator of the Remediation Division of the Department of Environmental Quality spoke for the department. She said she started at the DEQ four months ago and only recently learned of the issues in the Lockwood area. She said she previously worked as a chief hydrogeologist at a consulting firm in Oregon where she worked for more than six years on a contaminated water supply along a river--so the hydrogeology of that area was similar to this. She said as she reviewed the information on Lockwood this week, she came to believe there is a different approach the department can take. She asked for more time to review the information and discuss some of the thoughts she has for potential solutions with her staff and the director.

SEN. DOHERTY asked who was the previous head of this division.

MS. MILLS said JOHN GEACH was the division administrator for the Environmental Remediation Division before the reorganization of the department.

SEN. DOHERTY asked if the Water Quality Program has been involved and if there were any notices of potential violations or any enforcement actions being looked at or taken.

MS. MILLS said there are a couple of answers to that question. There has been some work done by the previous Water Quality Bureau, then with the Department of Health and Environmental Sciences. The Water Quality Bureau provided some of the funding for building this treatment as a emergency response. Some money was provided from the Environmental Quality Protection Fund that supports the CECRA Program to investigate the solvent conditions in ground water. The site is on the division's CECRA list. She said she believes it is listed as either a low or medium priority site and she didn't know that there is an imminent threat to human health and the environment, particularly with the emergency actions that were taken. The owner of the EZ Shop? has been identified as a Responsible Party for the benzene contamination. MS. MILLS stated that one of the solutions that she would like to explore with the department staff and director is an effort to cost recover; to determine whether it is appropriate for the RP to base his bill payments on what the Board might cover. Regarding enforcement of the solvent issues, the DEQ has not identified a single source or possible multiple sources. She said the department has

identified sites that may be sources, but without additional study they are not able to formally list PLPs.

SEN. DOHERTY said one of the concerns is that the ground water in the Lockwood area is contaminated, so new homes can not be built there. He said at some point it seems the Billings Chamber of Commerce ought to get interested in the ground water contamination.

MS. MILLS said she believes people could move to Lockwood. There is an area where both the solvents and the benzene contamination have been identified. It does not appear to underlie the whole area of Lockwood, so there may be safe locations to install wells. There are relatively inexpensive options to residents for low levels of contamination, for example, the use of carbon filters. She concluded that she guessed the “answer is yes and no.” If new residents were interested in coming in that wanted to drill a well, she said she would recommend they work with the Lockwood Water Users to find out the possible risks.

MR. NOBLE asked if MS. MILLS had discussed the problem with someone in the department, perhaps MR. GEACH.

MS. MILLS said she had spoken with MR. GEACH, who gave her a good summary and history of the project and some of the studies that had been done in the area.

TIM MORRIS spoke for the Petroleum Tank Release Compensation Board. He said MR. RUSSELL is correct. What the Board’s statutes allow the Fund to do is to reimburse owners and operators for the cost of reimbursement to third parties for property damage and/or bodily injury. The owner in this instance has not submitted any of those charges for reimbursement, so the Fund is unable to make any reimbursements.

SEN. DOHERTY asked what could be done?

MR. MORRIS said he believes Lockwood would have to settle with the RP, MR.

CHRISTENSEN, or Montana Petroleum Supply in this case, and either present that settlement to the Board for potential reimbursement, or if they can’t come to an agreement, then they have to settle their differences in a court of law.

SEN. DOHERTY said his question is more related to the law. If an RP has been identified, why not get the money to the people who have incurred the costs and then go after the RP, rather than telling these folks to spend their money, then sue the RP and then the state will stand aside.

MR. MORRIS said they are not an insurance company, per se, that they are a reimbursement organization. He said he didn't know exactly how someone might want to change the law to answer that concern.

MR. MITCHELL said when they are talking about reimbursing the owner, they're not talking about the Lockwood Water Users. They're talking about the tank owner or the person responsible for release that finally has been identified as the Responsible Party. The Petro Board then deals only with the tank owner. But the Petro Fund is available for reimbursement of third party claims up to a million dollars as submitted to the board.

MR. MORRIS said MR. MITCHELL'S information is correct, minus the co-payment 50% of the first \$35,000. This site cost approximately \$150,000.

SEN. DOHERTY said it seems the reason that Lockwood won't settle is that they have to hold the Responsible Party harmless for any future damages or any future cleanup.

MR. MORRIS said the owners have told him that the RP would submit all the charges as presented if the Board would reimburse him and that Lockwood would hold him harmless for any charges which the Board would not reimburse.

MR. NOBLE said he had another question for MS. MILLS. Has the state identified the PRP's or RP's and are there more than one, are there several, or is it known?

MS. MILLS said that for the Lockwood Solvent Site, as it is referred to the DEQ's CECRA listing, the department hasn't identified one or more PLP's at this time because it hasn't done the record search that is needed. She said the data that has been collected to date provides some evidence that there are probably multiple parties, but the department doesn't know who they are or what sites they came from.

MR. NOBLE said the Council was currently at a standstill because it is not its place to resolve disputes. He then asked if the water users had a proposed bill.

MS. MILLS said it doesn't really relate to Senate Bill 382 in a formal way. She said to further answer SEN. DOHERTY regarding new residents moving to the Lockwood area, this location has been discussed recently with the EPA as a possible Brownfield's candidate. A Brownfield is a site that would be cleaned up leaving some contamination on the property based on the land uses. The golf course in Anaconda is a prime example of a Brownfield in Montana. The Lockwood Solvent Site is somewhat problematic for the department because it hasn't identified the sources or the PLP's. Because the contamination is so widespread, it may be quite expensive

to address the problem. There may be some land development options for industrial uses that would allow leaving the contaminated ground water there and finding other water supplies. The EPA has a budget set aside of \$10 million and they can provide up to \$200,000 to communities and local governments who need to apply for this money to plan the development of those properties. Those monies can't be used for remediation. But they can be used for planning. And that is an indirect link to Senate Bill 382.

SEN. MESAROS said he was trying to discern how big a contamination problem this is.

MR. RUSSELL said it is an area that is encompassed by the river and bordered by the interstate. There are parts up to the hillsides so it is impossible to pump over the hill. The area is approximately five or six miles square, sparsely occupied by five or ten acre tracts. The water users are not looking for another water source, because they already have one, but the reservations may need to be firmed up. A nonprofit group can not afford to sue the city of Billings for its water. There are at least twenty or thirty residences that don't have a water supply that's safe.

MR. NOBLE asked if they had considered putting in a filtration system, as MS. MILLS described.

MS. MILLS said it depends on the proximity of the wells to one another. If it is a community well, one is installed for perhaps, four families. But generally, it's a wellhead treatment unit and those are also available for municipal wells. The costs of purchasing and maintaining are more expensive for municipal wells, and then the disposal costs for the carbon.

MR. NOBLE asked what the county commissioners have said?

MR. RUSSELL said the county commissioners would need somebody to come forward and ask for help. He said he is not sure the residents are prepared to do so, or if all of these particular businesses or residences are aware that they have solvent contamination.

MR. NOBLE asked if there were people drinking their water who didn't know whether or not it was contaminated?

MR. RUSSELL said he believes that occurs quite a bit in the state of Montana; people believe if it tastes fine, it is fine. In this case, the DEQ has not looked to see quite how widespread this is.

SEN. DOHERTY said if the state is aware that there are potential problems with solvents and/or benzene in people's drinking water, and the state--either the city-county or the state Department of Health-- hasn't bothered to tell those people that they may be drinking water that is

contaminated, that may be exposing the state to liability. He asked if it was general knowledge in the Lockwood area that the wells may be contaminated with benzene?

MR. RUSSELL said that the DEQ, Water Quality Bureau at the time, informed people whose wells were tested. He said he did not know of any public acknowledgment or publication.

SEN. MESAROS asked what involvement the County Health Department has.

MR. RUSSELL said that as a public water supplier, they are only involved with the state. Dealing with the county is outside their purview.

MR. NOBLE said it seems there are missing parties here. He asked the DEQ to attend the first meeting of the new EQC and bring in an update on this subject.

REP. RYAN said he had one more question. He then asked MS. MILLS if she had any time frame for when this issue might be resolved?

MS. MILLS said she can't provide a time frame right now, but hopes at the next meeting the department can report some progress. She said there are several legal components: the question of whether there are multiple PRPs, and not knowing where the sources are for the solvents. She said this next year she also intends to be more aggressive in recovering costs from RPs who benefit from the LUST Fund program. She said in thinking about the technical and legal issues, she believes there may be some creative solutions that haven't been discussed.

REP. RYAN asked MR. RUSSELL if they are desperate regarding expenses?

MR. RUSSELL said they are not desperate. But they can't be asked to hold harmless an RP. He said they incur \$12,000 worth of bills some years; \$9,000 others. He said they received an \$11,000 grant from the governor's Environmental Contingency Fund. The state says the benzene is nearly gone, but Lockwood still has a solvent problem. He said it is unfortunate the water users have to keep their rates up for people who aren't responsible for the problem.

MR. NOBLE said thank you to everyone who participated and said the subject would be addressed at another time.

GEORGE DARROW MEPA AWARD SELECTION

MR. NOBLE said it was time for the George Darrow MEPA award selection. SENATOR MESAROS and REP. RYAN were the committee members. He then turned it over to the senator.

SEN. MESAROS said in reviewing for the George Darrow award, the committee took applications on two separate occasions and received several very qualified applications for review. (EXHIBIT 9) After extensive solicitation and review, the subcommittee recommends that Robert J. "Bob" Thompson receive the 1996 George Darrow MEPA award. Other nominations included John North, Sandra Olsen, Joe Gurrieri, Peter Werner, Ginger Thomas, Lisa Fairman, the Montana Wilderness Association and Chuck Sperry. The subcommittee reviewed the nominations based on the following noninclusive criteria: efficiency and thoroughness in the application of the MEPA process, creative and effective public involvement strategies, commitment to training state agency personnel in the implementation of MEPA, diligence in and commitment to compliance with both the letter and spirit of MEPA, documented success in applying the MEPA process, such as decreasing costs both environmentally and fiscally, less lawsuits, public involvement success, inter- and intra-agency cooperation, governmental accountability, and demonstrated net effect of good governmental decisions. The subcommittee felt that Bob Thompson's work in MEPA implementation encompassed all of the six criteria above. His highlighted accomplishments included staffing a work group that conducted a major revision of the MEPA administrative rules in 1988. That process took three years to complete and countless hours of Bob's time and effort. His facilitation and understanding of the MEPA process was crucial to the success of this very complex and extensive revision process. In this tenure at EQC (1984 - 1990), Bob reviewed and commented on hundreds and hundreds of MEPA documents, wrote seven opinions on MEPA implementation, offered legal advice on MEPA implementation, and assisted and trained state agency personnel in the MEPA process. As a water quality attorney for DEQ, Bob conducted internal department training. He wrote the first categorical exclusion for the department which was used as a model for other agencies. He worked extensively with EQC staff in setting up EQC training programs with DEQ staff, and reviewed and contributed to the EQC's MEPA Handbook. He prevented countless MEPA lawsuits, and defended the Department in at least five lawsuits that had MEPA implications. The subcommittee felt that Bob's accomplishments were substantial and will have a lasting and enduring effect on successful MEPA implementation. The subcommittee is proud to recommend Bob Thompson for the 1996 George Darrow MEPA Award.

MR. NOBLE said thank you SEN. MESAROS. He then asked for a motion that the council accept the subcommittee's suggestion.

REP. TASH so moved.

MR. TOLLEFSON ?

MR. NOBLE took a vote. The vote was unanimous. He then presented the award to Patty Thompson, Bob's wife, and thanked SEN. MESAROS and REP. RYAN for their work on the subcommittee.

OTHER BUSINESS

Water loss, possibly due to test drill holes for Kendall mine

MR. NOBLE stated he had asked MS. MILLS to stay for the issue of the Kendall Mine. The Council received a letter from a rancher named Van Hower who lived close to the mine, near Lewistown. The letter asked the Council to address the water loss in the area that may or may not have come from the mine's test drill holes. MR. NOBLE said he discussed this issue with SEN. DOHERTY, MR. EVERTS and REP. KNOX, and though the Council did not have time to thoroughly discuss the issue, they would like to see the DEQ hold a public meeting. He then asked SEN. DOHERTY to confirm this.

SEN. DOHERTY said this gentleman is a constituent of REP. KNOX's and has been a rancher in the area for a long time. He believes he's lost some springs in the area, and apparently there's a reclamation plan going to be filed for the closure of the Kendall Mine. Next spring he would like to come and talk with the Council. The EQC could also get staff from the old State Lands Department to talk about the reclamation plan and the water and the minerals in the water and the amount of water in his springs. He stated he thought having public hearings in the Lewistown area would be very beneficial for everybody.

MR. NOBLE said the DEQ recently had some staff there and that a report was forthcoming. He said MR. EVERTS knew who in the department MS. MILLS could speak with.

MS. MILLS said that is part of DEQ's current jurisdiction, but she wasn't sure which division it fell under.

MR. NOBLE said the Council currently doesn't have time to hold a discussion, but since the state has never had a mine closure under the existing law, the Council would like to ask that the department hold a public hearing in that area. He said REP. KNOX has known about this for some years and has spent quite a bit of time on it.

MS. MILLS said she would pass the request along.

MR. NOBLE asked if she would keep MR. EVERTS apprised of what is happening.

MS. MILLS said yes.

Council Review and Critique of the Interim

MR. EVERTS said the last agenda item under other business is a quick review and critique of the interim. He asked if the Council had recommendations on how the staff could better assist the Council or how things are operated?

MR. TOLLEFSON said he has been continually amazed and impressed with the work of the staff. He said the Council has been proud to work with them and the staff should be proud of themselves.

REP. RYAN said this was his first term on the EQC, and he has been amazed that a broad range of topics have been presented so that he has been able to understand them. He said he thinks the staff has done an incredible job.

SEN. MESAROS said the only thing he could add is to offer congratulations for a job well done.

MR. NOBLE said he expected the work of the Enforcement Subcommittee to take two more years, and that he is in awe that it was able to be completed this interim. He said the staff has done a hell of a job and deserves a big round of applause.

Monitoring of Mr. Paul water problem

REP. KNOX said there is another matter concerning MR. PAUL that the Council needs to decide in some manner today. He stated it is a water problem that appears to be quite unique. The party that believes they have been injured has hired an attorney. He said he reviewed the issue with MS. WILLIAMS and REP. COCCHIARELLA and believes there is nothing the Council can do at this time. He continued that they do feel it should be monitored, because the results could be very meaningful.

MR. EVERTS said this was an issue in Bozeman that came up in the Enforcement Subcommittee. REP. KNOX said next interim's Council is probably going to want to monitor it to see how it is resolved.

REP. COCCHIARELLA made a motion for the next EQC to monitor the issue.

REP. KNOX seconded the motion.

MR. NOBLE asked for a vote, and it was unanimous.

SEN. MESAROS asked if the staff would submit copies of the grazing BMP publications?

MR. EVERTS said he would get them to the Council members.

MR. EVERTS said on behalf of the staff, he wanted to thank the Council members for their efforts this interim.

MR. NOBLE said everybody have a safe trip home.

The meeting ended at 4:22 p.m.